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United States
Circuit Court of Appeals
For the Ninth Circuit.

Transcript of Record.
(In Three Volumes.)

THE PACIFIC COAL AND TRANSPORTA-
TION COMPANY, a Corporation, and M. D.
McCUMBER,

Appellants,

vs.

PIONEER MINING COMPANY, a Corporation,

Appellee.

VOLUME I.

(Pages 1 to 336, Inclusive.)

Upon Appeal from the United States District Court for
the District of Alaska, Second Division.

FILED

SEP 18 1912

Records of U. S. Circuit Court
of Appeals

759

United States
Circuit Court of Appeals
For the Ninth Circuit.

Transcript of Record.
(*In Three Volumes.*)

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McCUMBER,

Appellants,

VS.

PIONEER MINING COMPANY, a Corporation,

Appellee.

VOLUME I.

(Pages 1 to 336, Inclusive.)

Upon Appeal from the United States District Court for
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INDEX OF PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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GEO. B. GRIGSBY, Nome, Alaska,
ELWOOD BRUNER, Nome, Alaska,
ALBERT H. ELLIOT, 34 Ellis St., San Francisco, Cal.,
Attorneys for Defendants.

*In the District Court for the District of Alaska,
Second Division.*

No. —.

THE PIONEER MINING COMPANY, a Corporation,

Plaintiff,

vs.

THE PACIFIC COAL AND TRANSPORTATION COMPANY, a Corporation, M. D. McCUMBER, JOHN DOE, and RICHARD ROE,

Defendants.

Complaint.

The plaintiff above named complains and alleges:

I.

That the plaintiff is now, and during all of the times hereinafter mentioned it was, a corporation duly organized, created and existing under the laws of the State of Washington, doing business in the District of Alaska.

II.

That the defendant Pacific Coal and Transportation Company is now, and during all of the times hereinafter mentioned it was, a corporation duly organized, created and existing under the laws of the State of Maine, doing business in the District of Alaska.

III.

That the names of the defendants John Doe and Richard Roe are fictitious, and that their real names are unknown to the plaintiff. [1*]

IV.

That the plaintiff is now, and for a long time hitherto, it has been the owner of and in the possession of that certain placer mining claim lying and being in the Cape Nome Recording District, District of Alaska, known as Bench Claim No. one (1) Moonlight Creek, near Moonlight Springs, and described by metes and bounds as follows:

Commencing at Stake No. 1, the northwest corner from which U. S. Monument No. 2 bears north $4^{\circ} 27'$ east 670.2 feet; thence south $65^{\circ} 02'$ east 730 feet to stake No. 2, the northeast corner; thence south $40^{\circ} 27'$ west 987.5 feet to stake No. 3, the southeast corner; thence north $59^{\circ} 43'$ west 741.6 feet to stake No. 4, the southwest corner; thence north $42^{\circ} 06'$ east 923.4 feet to stake No. 1 or place of beginning, containing 15.668 acres (all bearings refer to the true meridian; magnetic variation $19^{\circ} 32'$ east—survey No. 608).

*Page-number appearing at foot of page of original certified Record.

Amendment allowed to complaint this 14th day of November, 1911, and directed to be attached to the margin of the complaint.

J. SUNDBACK,

Clerk.

By J. Allison Bruner,

Deputy.

Boundary description of Bench No. 1 on Moonlight Creek:

Commencing at stake No. 1 or the SW. corner, which is identical with the SW. corner of Robert Lyng's Moonlight claim and the NE. corner of placer claim No. 2 on Moonlight Creek;

Thence S $60^{\circ} 12'$ E—741.5 ft. to stake No. 2 or the SE. corner, which is identical with the SW. corner of the Carlson location;

Thence N. $40^{\circ} 01'$ E.—986.8 ft. to stake No. 3 or the NE. corner, which is identical with the NW. corner of the Carlson location;

Thence N. $60^{\circ} 12'$ W.—600.— ft. to stake No. 4 or the NW. corner;

Thence S. $47^{\circ} 51'$ W.—1021.3 ft. to stake No. 1 or place of beginning;

All bearings refer to the true meridian, magnetic variation— $19^{\circ} 30'$ E.

V.

That the said defendants and each of them claim an estate or interest in said premises adverse to the plaintiff, the extent and nature of which adverse claims are to the plaintiff unknown.

VI.

That the claims of said defendants are, and each

of them is, without any right whatsoever, and that none of the defendants have any right, title, estate or interest in said premises or any part or portion thereof.

VII.

That said premises are of great value, to wit, of the value of \$10,000.00 and upwards; and that the plaintiff [2] and its predecessors in interest, ever since the 3d day of January, 1899, have been the owners, and plaintiff is now the owner of the afore-said premises, and every part thereof, together with the improvements thereon.

WHEREFORE, the plaintiff prays judgment that the defendants, and each of them, have no estate or interest whatsoever in or to said premises or any part thereof; and that the title of the plaintiff is good and valid, and that the defendants, and each of them, be forever enjoined and restrained from asserting any claim whatsoever in and to said placer mining claim adverse to the plaintiff; and for such other and further relief as to the Court shall seem meet and proper; and for the costs and disbursements of the plaintiff herein.

O. D. COCHRAN,

G. J. LOMEN,

Attys. for Plff.

United States of America,
District of Alaska,—ss.

L. Stevenson, being first duly sworn, deposes and says: That he is the manager and agent of the Pioneer Mining Company, a corporation, plaintiff above named; that he has read the foregoing complaint, knows the contents thereof, and that the

same is true as he verily believes.

L. STEVENSON.

Subscribed and sworn to before me this 7th day of November, 1910.

[Notarial Seal]

G. J. LOMEN,

Notary Public in and for the District of Alaska. [3]

[Endorsed]: #2245. In the United States District Court for the District of Alaska, Second Division. The Pioneer Mining Company, a Corporation, Plaintiff, vs. The Pacific Coal and Transportation Company, a Corporation, et als., Defendants. Complaint. Filed in the office of the Clerk of the District Court of Alaska, Second Division, at Nome. Nov. 7, 1910. John Sundback, Clerk. By ———, Deputy. L. O. D. Cochran & G. J. Lomen, Attorneys for Plaintiff. [4]

In the District Court for the District of Alaska, Second Division.

No. 2245.

PIONEER MINING COMPANY, a Corporation,
Plaintiff,

vs.

THE PACIFIC COAL AND TRANSPORTATION COMPANY, a Corporation, M. D. McCUMBER, JOHN DOE and RICHARD ROE,

Defendants.

Demurrer.

Comes now the defendant, M. D. McCumber, and demurs to plaintiff's complaint in the above-entitled action on the following grounds, to wit: That the said complaint does not state facts sufficient to

constitute a cause of action, or any cause of action.

Wherefore, defendant demands that said action be dismissed and for his costs.

WILLIAM A. GILMORE,
GEO. B. GRIGSBY,

Attorneys for Defendant, M. D. McCumber.

Due service of the above and foregoing demurrer acknowledged by receipt of copy, this 4th day of January, 1911.

O. D. COCHRAN,

Of Attorneys for Plaintiff.

[Endorsed]: Original. No. 2245. In the District Court for the District of Alaska, Second Division. Pioneer Mining Company, a Corporation, Plaintiff, vs. The Pacific Coal and Transportation Company, M. D. McCumber, John Doe and Richard Roe, Defendants. Demurrer. Filed in the office of the Clerk of the District Court of Alaska, Second Division, at Nome. Jan. 4, 1911. John Sundback, Clerk. By ———, Deputy. William A. Gilmore, Attorney at Law, Nome, Alaska, Attorney for M. D. McCumber. L. [5]

[Minutes—March 4, 1911.]

In the District Court for the District of Alaska, Second Division.

Term Minutes, General, 1911, Term, beginning February 1, 1911.

Saturday, March 4, 1911, at 10 A. M.

Court convened pursuant to adjournment.

Hon. CORNELIUS D. MURANE, District Judge, presiding.

Upon the convening of Court the following proceedings were had:

2245.

PIONEER MINING CO.

vs.

THE PACIFIC COAL & TRANSPORTATION
CO. et al.

[Recital Re Overruling Demurrer to Complaint, etc.]

The demurrer of the defendant M. D. McCumber was submitted to the Court and overruled. On motion the defendant McCumber was granted two weeks from this date in which to answer the complaint. [6]

[Minutes—May 20, 1911.]

In the District Court for the District of Alaska, Second Division.

Term Minutes, General, 1911, Term, beginning February 1, 1911.

Saturday, May 20, 1911, at 10 A. M.

Court convened pursuant to adjournment.

Hon. CORNELIUS D. MURANE, District Judge,
presiding.

Upon the convening of Court the following proceedings were had:

2245.

PIONEER MINING CO.

vs.

McCUMBER et al.

Mr. William A. Gilmore, attorney for defendant McCumber, and the attorneys for defendant Pacific Coal & Transportation Company presented to the Court a motion to have this cause placed on the jury calendar for trial, and after argument of counsel said motion was submitted to the Court and taken under advisement. [7]

In the District Court for the District of Alaska, Second Division.

PIONEER MINING COMPANY, a Corporation,
Plaintiff,

vs.

THE PACIFIC COAL AND TRANSPORTA-
TION CO., a Corporation, and M. D. Mc-
CUMBER et al.,
Defendants.

Opinion.

O. D. COCHRAN and G. J. LOMEN, Attorneys
for Plaintiff.

J. ALLISON BRUNER, Attorney for Defend-
ant The Pacific Coal and Transportation
Co.

WILLIAM A. GILMORE, GEO. B. GRIGSBY,
ELWOOD BRUNER, Attorneys for De-
fendant M. D. McCumber.

Plaintiff brings this action and alleges in para-

graph IV of its complaint that plaintiff is now and for a long time hitherto has been the owner of and in the possession of that certain placer mining claim lying and being in the Cape Nome Recording District, District of Alaska, and known as Bench No. 1 Moonlight Creek, near Moonlight Springs, and describes it by metes and bounds and courses and distances according to Survey No. 608.

Plaintiff further alleges in paragraph V that defendants, and each of them, claim and assert an interest in said premises adverse to plaintiff, the extent and nature of which adverse claims are to plaintiff unknown.

Plaintiff further alleges in paragraph VI of its complaint that the claims of said defendants, and each of them, are without any right whatever.

Plaintiff in paragraph VII of its complaint further alleges the value of the property to be ten thousand dollars and prays [8] that the defendants be forever restrained and enjoined from asserting any claim whatever in and to said premises adverse to plaintiff, etc.

To this complaint the defendant the Pacific Coal and Transportation Company and the defendant M. D. McCumber have answered separately. The answers of each of said defendants are identical, except that the defendant McCumber is alleged to be a lessee under a lease from the defendant the Pacific Coal and Transportation Company. Both answers deny all of the material allegations of the complaint and specifically deny the possession of plaintiff.

In the first affirmative answer of the defendant The Pacific Coal and Transportation Company, the said defendant alleges that it is the owner of the Moonlight or Grant claim under and by virtue of a valid location, describing the same by metes and bounds and courses and distances, and alleges that it and its grantors and predecessors in interest are the owners in fee of the whole of said claim, having entered in the exclusive, open and notorious possession of the whole of said claim on the 9th day of January, 1889, and ever since have been in the uninterrupted, exclusive, open and notorious possession of the whole of said claim. The said defendant in its said answer then sets up its written lease to the defendant M. D. McCumber, dated on the 15th day of August, 1908.

Paragraph IV of the answer of the defendant The Pacific Coal and Transportation Company alleges that the alleged placer mining claim described in paragraph IV of plaintiff's complaint as Bench No. 1 Moonlight Creek, near Moonlight Springs, covers and embraces an overlap of a large portion of the westerly end of the Grant claim above described and now in possession of said answering defendant as above mentioned, the exact boundaries and limitations claimed by said plaintiff being unknown to said answering defendant; that said plaintiff has no right. title, interest or estate in and [9] to that said part or portion so claimed of the said Grant claim, but wrongfully and unlawfully and without right asserts title and ownership thereto; and said defendant then again alleges that it is in possession of said overlap.

In its second affirmative defense said defendant sets up ownership in the said Grant claim and alleges that it and its grantors and predecessors in interest have been in the uninterrupted, notorious and exclusive possession of the whole of said placer claim under color and claim of said title by reason of said Grant location ever since the 9th day of January, 1899.

The third affirmative defense of said defendant alleges that said defendant was in the exclusive possession of the said overlap at the time of the commencement of this action by plaintiff.

In the fourth affirmative answer said defendant pleads an estoppel against plaintiff. The said defendant then prays judgment:

First. That the complaint of plaintiff be dismissed.

Second. That it be decreed that the defendant The Pacific Coal and Transportation Company is the owner in fee of the whole of said Grant claim as above described.

Fourth. That it be decreed and adjudged that the plaintiff has no claim, estate, interest or demand in or to any part or portion of said Grant claim as above described.

Fifth. That it be adjudged and decreed that the plaintiff be forever barred and enjoined from asserting any claim, right, title, interest or estate in or to any part or portion of said Grant claim as above described.

Seventh. For such other and further relief as may seem meet and proper to the Court.

To the answers of said defendants plaintiff filed a reply denying all of the several affirmative answers.

The cause is now before the Court upon the motions of defendant, The Pacific Coal and Transportation Co., and defendant M. D. McCumber, for an order assigning this cause on the jury [10] trial calendar and for fixing the date of the trial of said action, which raises the question whether said cause should be tried before the Court as a suit in equity or before the Court and jury as an action at law.

The complaint is evidently framed under sec. 475 of the Alaska Code, and plaintiff's attorneys in argument contended that it is a suit in equity to quiet title and to determine adverse claims, while defendants contend in their argument and brief that they are entitled to a jury trial upon the question of possession and title and that the case should be tried before a jury, and cites sec. I, article VII, of the Constitution of the United States, which they contend entitled them to a jury trial in a cause of this nature. Counsel for defendants cite a number of cases in support of this contention, but rely chiefly upon the case of Carlson vs. Sullivan, 146 Fed. Rep. 476, and the case of Donahue vs. Meister, 25 Pac. Rep. 1096.

The case of Carlson vs. Sullivan was a suit in partition which went to the Circuit Court of Appeals, Ninth Circuit, from this Division, but the complaint in that case shows that the plaintiff was not in possession and that the defendants, who were in possession, were disputing the title of plaintiff.

In the same volume of the Fed. Rep., page 480, is

another case which went from this Division, entitled *Forderer vs. Schmidt*, where the Circuit Court of Appeals draws the distinction between a case where the plaintiff is out of possession and his title is disputed, and a case where the plaintiff is out of possession and whose title is not disputed. I do not think that either case is decisive of the question before the Court on this motion.

The Circuit Court of Appeals, Ninth Circuit, in the case of *Madden vs. McKay*, reported in 144 Fed. Rep. 64, seems to very clearly lay down the proper procedure in a case of this character and appears to establish the rule by which this Court should be [11] guided in passing upon the question as to whether or not an action should be tried to a court sitting as a court of equity or should be transferred to the law side of the court and tried to a jury.

We quote from the opinion in said case:

“Under such a statute (sec. 475 of the Alaska Code), if the facts pleaded present a case of equitable cognizance, the cause should be heard upon the equity side of the court according to the procedure provided for the disposition of such cases, and, if the complaint is sustained, the plaintiff will be given equitable relief. If, on the other hand, the facts alleged are such as to bring the case within the cognizance of a court of law, it will be tried as an action at law and the right of the parties to a jury trial will be conserved. If the complaint be framed ostensibly as a bill in equity praying for equitable relief and yet is in substance a complaint in an action at law, the remedy of the defendant is to move

that it be dealt with and heard as an action at law.”

This, in substance, is what the defendants are now demanding in this case, but it will be seen from the quotation from the above case that the issue is determined upon the allegations of the complaint. Defendants in their argument practically admit that the complaint in the case at bar is sufficient under section 475 but make the contention that said section is unconstitutional under the decision of *Donahue vs. Meister, supra*, and *Whitehead vs. Shattuck*, 138 U. S. 146; and further contend that by reason of the fact that the defendant denies the possession of plaintiff, it changes the form of action from one in equity to one in law.

The Supreme Court of the State of Oregon in a number of decisions has sustained the validity of their section 500, which in substance is the same as our section 475, and even has gone further in that the court has held that plaintiff need not be in possession in order to maintain the action if the defendant is not in possession. [12]

Coolidge and McClaine vs. Forward, 11 Or. 118.

Thompson vs. Woolf, 8 Or. 455.

In *Goldsmith vs. Gilliland* (District Court of Oregon), 22 Fed. Rep. 867, Judge Deady says:

“But in a suit brought under sec. 500 aforesaid (Oregon Code, which is the same as our section 475) the plaintiff is not required to state the nature and circumstances of the defendant’s claim or to deny knowledge thereof, but in this respect he is only bound to allege the making of such claim and that it is wrongful, and call upon

the defendant to set it forth in his answer and submit its validity to the judgment and decision of the court. . . . Plaintiff may in any case avail himself of the statute.”

The reasoning in the case of *Holland vs. Challen*, 110 U. S. 23, is very apt when considering cases under our Code. In this case the Court quotes a Kentucky statute, which is very similar to ours; also the statute of Nebraska, which is very much broader than ours, as it authorizes a suit even to parties out of possession.

The Supreme Court of the United States has sustained the Oregon statute in the well-considered case of *Stark vs. Starrs*, 73 U. S. 409, where Judge Field, delivering the opinion of the Court, says:

“This is a suit in equity to quiet the title of the plaintiff to certain parcels of land situated in the city of Portland, in the State of Oregon. It is founded upon a statute of that State which provides that ‘any person in possession of real property may maintain a suit in equity against another who claims an estate or interest therein adverse to him, for the purpose of determining such claim, estate, or interest.’ This statute confers a jurisdiction beyond that ordinarily exercised by courts of equity, to afford relief in the quieting of title and possession of real property. By the ordinary jurisdiction of those courts a suit would not lie for that purpose, unless the possession of the plaintiff had been previously disturbed by legal proceedings on the part [13] of the defendant, and the right

of the plaintiff had been sustained by successive judgments in his favor.

“The equity asserted in such cases had its origin in the prolonged litigation which the action of ejectment permitted. That action being founded upon a fictitious demise between fictitious parties, a recovery therein constituted no bar to a second similar action, or to any number of similar actions for the same premises. With slight changes in these fictions a new action might be instituted and conducted as though no previous action had ever been commenced. Thus the party in possession, though successful in every case, might be harassed if not ruined by the continued litigation. To prevent such litigation, after one or more trials, and to secure peace to the party in possession, courts of equity interposed upon proper application and terminated the controversy.

“By the statute in question it is unnecessary in order to obtain this interposition of equity for the party in possession to delay his suit until his possession had been disturbed by legal proceedings, and judgment in those proceedings has passed in his favor. It is sufficient that a party out of possession claims an estate or interest in the property adverse to him. He can then at once commence his suit, and require the nature and character of such adverse estate or interest to be set forth and subjected to judicial investigation and determination, and that the right of possession as between him and the claimant shall be forever quieted.”

The case of Wehrman vs. Conklin, 155 U. S. 322, cites with approval the case of Holland vs. Challen, *supra*, and goes extensively into the question of the jurisdiction of equity and its origin to quiet title at common law and also under the codes of different states. This case alone would be decisive of both points raised by defendants as it distinguishes the case of Whitehead vs. Shattuck relied upon by defendants and shows that it is not applicable to the case at bar. This case was also followed by Judge Rodey in Hernandez vs. J. Ochoa y Hermano, 4 Porto Rico Fed. Rep. 400, which is a very instructive decision. [14]

In the case of Angus vs. Craven, 64 Pac. Rep. 1091, the Supreme Court of California arrives at a different conclusion from that in Donahue vs. Meister, *supra*, and in effect overrules it. This is a very well-considered case and seems to be more in accord with the better authorities than the Donahue case.

An examination of the California statute, which appears to be the same as the New Mexico statute, shows that they are both radically different from the Alaska Code in that they provide that a party may maintain an action to determine adverse claims without designating what character of action, while our Code provides that a party in possession may maintain an action of an equitable nature.

The Court has considered this case so far solely upon the allegations of the complaint and the denials in the answer, and has reached the conclusion that even thus considered the cause should be retained

on the equity side of the court, but it will be observed that the affirmative defenses set up in defendants' answers, or at least some of them, are purely equitable and the defendants pray for equitable relief. Under such a state of the pleadings the authorities seem to hold that, even if it should develop that the plaintiff was not in possession at the time of the commencement of the action, the defendants have submitted themselves to the jurisdiction of a court of equity and the court sitting as such might determine the whole controversy.

State vs. Blize, 37 Oreg. 408.

O'Hara vs. Parker, 27 Oreg. 172.

32 Cyc., pages 1338 and 1367, and cases cited.

The rule seems to be that if a defendant does not wish to submit himself to the jurisdiction of a court of equity he must, before answering to the merits, have the jurisdictional facts determined either by demurrer or proper plea.

Defendants' motions are denied.

CORNELIUS D. MURANE,

District Judge.

Nome, Alaska, May 27, 1911. [15]

[Endorsed]: No. 2245. In the District Court for the District of Alaska, Second Division. Pioneer Mining Company, a Corporation, Plaintiff, vs. The Pacific Coal and Transportation Company, a Corporation, and M. D. McCumber, Defendants. Opinion. Filed in the office of the Clerk of the District Court of Alaska, Second Division, at Nome. May 27, 1911. John Sundback, Clerk. By R., Deputy. [16]

[Minutes—May 27, 1911.]

In the District Court for the District of Alaska, Second Division.

Term Minutes, General, 1911, Term, beginning
February 1, 1911.

Saturday, May 27, 1911, at 10 A. M.

Court convened pursuant to adjournment.

Hon. CORNELIUS D. MURANE, District Judge,
presiding.

Upon the convening of Court the following proceedings were had:

2245.

PIONEER MINING CO.

vs.

PACIFIC COAL & TRANSPORTATION CO. et al.

The Court handed down an opinion herein denying the motion to set this cause for trial before the Jury, to which ruling the defendants, through their counsel, excepted and exception was allowed.

2245.

PIONEER MINING CO.

vs.

PACIFIC COAL & TRANSPORTATION CO. et al.

Mr. J. Allison Bruner gave notice of a motion to submit certain issues herein to the Jury, said motion to be taken up on Saturday next. [17]

[Minutes—June 17, 1911.]

In the District Court for the District of Alaska, Second Division.

Term Minutes, General, 1911, Term, beginning
February 1, 1911.

Saturday, June 17, 1911, at 10 A. M.

Court convened pursuant to adjournment.

Hon. CORNELIUS D. MURANE, District Judge,
presiding.

Upon the convening of Court the following proceedings were had:

2245.

PIONEER MINING CO.,

vs.

PACIFIC C. & T. CO. et al.

The motion to submit certain issues of fact to the jury was argued by counsel for plaintiff and defendants, and the Court, being advised in the premises, denied said motion, to which ruling the defendants excepted and exception was allowed.

By stipulation of counsel this cause was set for trial on Tuesday, September 5, 1911, subject to a motion for continuance. **[18]**

[Minutes—October 26, 1911.]

In the District Court for the District of Alaska, Second Division.

Term Minutes, General, 1911, Term, beginning
February 1, 1911.

Thursday, October 26, 1911, at 10 A. M.

Court convened pursuant to adjournment.

Hon. CORNELIUS D. MURANE, District Judge,
presiding.

Upon the convening of Court the following proceedings were had:

2245.

PIONEER MINING CO.

vs.

PACIFIC COAL & TRANSPORTATION CO. et al.

The motion for continuance of the trial of the above-entitled cause came on regularly for hearing, the defendants (moving parties) being represented by Mr. William A. Gilmore, Mr. Elwood Bruner and Mr. Geo. B. Grigsby, the plaintiff by Mr. O. D. Cochran and Mr. G. J. Lomen. Motion argued and submitted. During the course of the argument Mr. G. J. Lomen read a motion for an order directing the Clerk not to issue a second commission to take the deposition of Andrew Jensen. Motion filed. [19]

[Minutes—October 27, 1911.]

In the District Court for the District of Alaska, Second Division.

Term Minutes, General, 1911, Term, beginning
February 1, 1911.

Friday, October, 27, 1911, at 10 A. M.

Court convened pursuant to adjournment.

Hon. CORNELIUS D. MURANE, District Judge,
presiding.

Upon the convening of Court the following proceedings were had:

2245.

PIONEER MINING CO.

vs.

PACIFIC COAL & TRANSPORTATION CO. et al.

The Court announced its decision on defendants' motion for continuance, heretofore submitted, and denied the same. An exception to the order was asked and allowed. Mr. William A. Gilmore, on behalf of defendants, gave notice of motion for a change of venue. Defendants allowed until Thursday next to file said motion and the hearing thereon set for Saturday, November 4, 1911. [20]

[Minutes—November 4, 1911.]

*In the District Court for the District of Alaska,
Second Division.*

Term Minutes, General, 1911, Term, beginning
February 1, 1911.

Saturday, November 4, 1911, at 10 A. M.

Court convened pursuant to adjournment.

Hon. CORNELIUS D. MURANE, District Judge,
Presiding.

Upon the convening of Court the following proceedings were had:

2245.

PIONEER MINING CO.

vs.

PACIFIC COAL & TRANSPORTATION CO.
et al.

The motion of defendants for an order setting and assigning this cause for trial, at Nome, before another Judge, came on regularly for hearing, Mr. William A. Gilmore and Mr. Elwood Bruner appearing for defendants, and Mr. G. J. Lomen, Mr. O. D. Cochran and Mr. Geo. D. Schofield appearing for plaintiff. Mr. G. J. Lomen presented and filed objections to the motion. Mr. O. D. Cochran presented and filed objections to the motion. After argument, the motion being submitted, the Court denied the motion.

Thereupon Mr. William A. Gilmore moved the Court for leave to file amended answer for defendant McCumber. Disposition of the application went

over until Monday, November 6, 1911, at 10 A. M., the Court directing defendants to file written application.

Mr. O. D. Cochran, on behalf of plaintiff, moved the Court to set this cause for trial for a day certain. Disposition of the motion continued until Monday, November 6, 1911, at 10 A. M. [21]

[Minutes—November 6, 1911.]

*In the District Court for the District of Alaska,
Second Division.*

Term Minutes, General, 1911, Term, beginning February 1, 1911.

Monday, November 6, 1911, at 10 A. M.

Court convened pursuant to adjournment.

Hon. CORNELIUS D. MURANE, District Judge,
Presiding.

Upon the convening of Court the following proceedings were had:

2245.

PIONEER MINING CO.

vs.

PACIFIC COAL & TRANSPORTATION CO.
et al.

Mr. William A. Gilmore presented and filed, on behalf of defendants, a written motion for leave to file amended answers. Mr. Lomen, on behalf of plaintiff, presented and filed plaintiff's objections thereto.

After argument by respective counsel, the Court granted defendants leave to file amended answers.

Upon motion of Mr. O. D. Cochran, for plaintiff, the Court set this cause for trial 10 A. M., November 13, 1911. [22]

*In the District Court for the District of Alaska,
Second Division.*

No. 2245.

PIONEER MINING COMPANY, a Corporation,
Plaintiff,

vs.

THE PACIFIC COAL & TRANSPORTATION
COMPANY, a Corporation, M. D. McCUM-
BER, JOHN DOE and RICHARD ROE,
Defendants.

**Amended Answer of Defendant Pacific Coal &
Transportation Company.**

Comes now defendant, Pacific Coal & Transportation Company, by leave of Court first had and obtained, and for an amended answer to plaintiff's complaint admits, denies and alleges as follows:

I.

Admits paragraphs I and II of plaintiff's complaint.

II.

Denies each and every allegation, matter and thing contained in paragraph IV of plaintiff's complaint, and the whole thereof.

III.

Admits that the defendant, the Pacific Coal & Transportation Company is a corporation and claims an estate or interest in a portion of the premises men-

tioned in paragraph V of plaintiff's complaint, as hereinafter affirmatively stated and plead.

IV.

Denies each and every allegation, matter and thing contained in paragraph VI and the whole thereof.

[23]

V.

Answering paragraph VII of plaintiff's complaint, defendant denies each and every allegation, matter and thing therein contained, save and except that the said premises described are of great value.

And for a first, further, separate and affirmative answer to plaintiff's complaint, this answering defendant alleges:

I.

That the defendant, Pacific Coal & Transportation Company, a corporation, is now and was at the time of the commencement of this suit, the owner in fee (subject only to the paramount title of the United States) of the land and premises hereinafter described and known as Bench No. 1 at the base of Anvil Mountain, and also called the "Moonlight" or "Grant" claim, under and by virtue of a valid location thereof as a placer mining claim, made by one W. N. Grant on the 9th day of January, 1899; that on said 9th day of January, 1899, the lands and premises hereinafter described and embraced within said location, were vacant, unoccupied and unappropriated mineral lands belonging to the Government of the United States and on said 9th day of January, 1899, the said W. N. Grant entered thereon and located the same for a placer mining claim under the

mineral land laws of the United States, and then and there performed each and every act thereon required by law to perfect and make a valid placer mining location of Government placer mineral land; that the said claim as thus located by said Grant was by him named and called No. 1 Bench, and subsequently named and called "Moonlight" or "Grant" claim, and contained [24] at the time of the original location thereof, by the said Grant an area, approximately, of twenty (20) acres; that said placer mining claim is described by metes and bounds as follows, to wit:

Commencing at the initial stake which is situated near the east center end of what is known as the Robert Lyng placer claim near Moonlight Springs, in the Cape Nome Mining and Recording District, District of Alaska, running thence S. $9^{\circ} 44'$ W. 312.4 ft. to stake No. 1; thence N. $79^{\circ} 59'$ E. 1268.5 ft. to stake No. 2; thence N. $00^{\circ} 11'$ E. 650 ft. to stake No. 3; thence S. $79^{\circ} 58'$ W. 1280.7 ft. to stake No. 4; thence S. $10^{\circ} 00'$ E. 393 ft. to the initial stake or place of beginning.

II.

That subsequent to the said 9th day of January, 1899, and after the location of said land as mineral land as above described by said W. N. Grant, and while the same was a valid and subsisting placer location under the mineral land laws of the United States, by mesne conveyances from said W. N. Grant and his grantees, the defendant Pacific Coal & Transportation Company, a corporation, became the owner in fee (subject only to the paramount title of the

United States) of the whole of said placer claim, and entered into exclusive, open and notorious possession of the whole of said claim, under and by virtue of the title acquired by and from the said W. N. Grant; and ever since the said 9th day of January, 1899, the said defendant, Pacific Coal & Transportation Company, its grantors and predecessors, in interest and its lessees, have been in the uninterrupted, sole, exclusive and notorious possession of the whole of said placer claim.

III.

That on the 15th day of August, A. D. 1908, the said defendant, Pacific Coal & Transportation Company, was so the owner of said claim and was then and there in the sole, quiet, exclusive, uninterrupted and notorious possession of the said claim and the whole thereof, and on said date the said defendant, Pacific Coal & Transportation Company did, by an instrument [25] in writing, lease, let and demise the whole of said placer claim to defendant, M. D. McCumber, who thereupon immediately entered into the exclusive possession of the whole of said claim and commenced to mine and prospect the same for gold, in accordance with the terms of said lease; that thereafter, on the 1st day of May, 1909, for a valid consideration, the term of said lease was extended in writing, and thereafter on the 28th day of April, 1911, the term of said lease was again extended in writing; that ever since said 15th day of August, 1908, this answering defendant, M. D. McCumber, has been in the exclusive possession of the said mining claim, under and by virtue of said written lease

and the said written extensions thereof.

IV.

That the alleged placer mining claim described in paragraph IV of plaintiff's complaint, and called by plaintiff Bench No. 1 Moonlight Creek, near Moonlight Springs, covers and embraces, as described in said paragraph, an overlap of a large portion of the westerly end of said "Grant" claim above described, and now in the possession of this answering defendant and its lessee, as above mentioned, the exact boundaries and limitations claimed by the said plaintiff being unknown to this answering defendant, but that said plaintiff has no right, title, interest or estate in and to the said part or portion so claimed of said "Grant" claim, but wrongfully and unlawfully and without right, asserts title and ownership thereto; that said plaintiff has no right, title, interest, ownership or possession of, in or to any of the lands or premises embraced within the said "Grant" placer claim above described by metes and bounds, and the said plaintiff has not now and never has had the possession or right of possession in and to any part or portion thereof. [26]

And for a second further, separate and affirmative defense to plaintiff's complaint this answering defendant alleges:

I.

That the defendant, Pacific Coal & Transportation Company, its grantors and predecessors in interest, and defendant M. D. McCumber, as lessee of said defendant, Pacific Coal & Transportation Company, has had the uninterrupted, adverse, notorious and ex-

clusive possession of the whole of that certain placer mining claim known as and called No. 1 Bench, also called "Moonlight" or "Grant" claim, and described by metes and bounds as follows, to wit:

Commencing at the initial stake which is situated near the east center end of what is known as the Robert Lyng placer claim near Moonlight Springs, in the Cape Nome Mining and Recording District, District of Alaska, running thence S. $9^{\circ} 44'$ W. 312.4 ft. to stake No. 1; thence N. $79^{\circ} 59'$ E. 1268.5 ft. to stake No. 2; thence N. $0^{\circ} 11'$ E. 650 ft. to stake No. 3; thence S. $79^{\circ} 58'$ W. 1280.7 ft. to stake No. 4; thence S. $10^{\circ} 00'$ 393 ft. to the initial stake or place of beginning.

under and by virtue of a valid and subsisting mineral location thereof, made by one W. N. Grant, on the 9th day of January, 1899, in compliance with the mineral land laws of the United States. And this answering defendant, the Pacific Coal & Transportation Company, its grantors and predecessors in interest, and lessees, have been in such uninterrupted, adverse, notorious and exclusive possession of the whole of said placer claim under color and claim of said title by reason of said Grant location ever since said 9th day of January, 1899.

And for a third further and affirmative defense to plaintiff's complaint, this answering defendant alleges as follows: [27]

I.

That on the 7th day of November, 1910, the date upon which the plaintiff instituted the above-entitled

suit, and for a long time prior thereto, and ever since, this answering defendant, and its lessee, M. D. McCumber, was in the exclusive, open and notorious possession of the whole of that certain placer mining claim known as and called Bench No. 1 at the base of Anvil Mountain, also called "Moonlight" or "Grant" claim, under and by virtue of a valid and subsisting mineral location made by one W. N. Grant on the 9th day of January, 1899.

II.

That the alleged placer claim, as described in paragraph IV of plaintiff's complaint, overlaps and conflicts with the westerly portion of the said Bench No. 1 at the base of Anvil Mountain or Moonlight or Grant claim above described; that on said 7th day of November, 1910, and for a long time prior thereto, this answering defendant, and its lessee, M. D. McCumber, was in the possession of the whole of said "Grant" placer mining claim, and was actively engaged in mining on the portion of said claim embraced within the alleged conflict, and its lessee, defendant M. D. McCumber, had, on said conflict area a mining cabin, mining tools, implements and mining equipment at said time, and for a long time prior thereto, and was actively engaged in prospecting and mining thereon.

III.

That the plaintiff, Pioneer Mining Company, was not in possession of said conflict area or any part thereof, and had no right, title, interest or estate therein, and had not on said date, or at any time since said date, the possession of or the right to mine or

prospect the same, or to maintain the above-entitled action in equity. [28]

And for a fourth further, separate and affirmative defense to plaintiff's complaint, this answering defendant alleges:

I.

That on the 9th day of January, 1899, one W. N. Grant made a valid and subsisting placer mining location known as and called No. 1 Bench, sometimes called "Moonlight" or "Grant" claim, and described by metes and bounds as follows:

Commencing at the initial stake which is situated near the east center end of what is known as the Robert Lyng placer claim near Moonlight Springs, in the Cape Nome Mining and Recording District, District of Alaska, running thence S. 9° 44' W. 312.4 ft. to stake No. 1; thence N. 79° 59' E. 1268.5 ft. to stake No. 2; thence N. 00° 11' E. 650 ft. to stake No. 3; thence S. 79° 58' W. 1280.7 ft. to stake No. 4; thence S. 10° 00' E. 393 ft. to the initial stake or place of beginning.

II.

That thereafter by mesne conveyances the defendant, Pacific Coal & Transportation Company, succeeded to all of the rights of the said Grant in and to the said placer claim, and the said defendant, Pacific Coal & Transportation Company, is now the owner in fee (subject only to the paramount title of the United States) of said placer mining claim.

III.

That this answering defendant and its lessee, M. D. McCumber are now, and ever since the 15th day of

August, 1908, have been, in the possession of and entitled to the possession of the whole of said claim.

IV.

That the plaintiff in the above-entitled action, in paragraph IV of its complaint, asserts ownership, title and possession to a large portion of the westerly part of said "Grant" placer claim as described in said paragraph IV of [29] said complaint.

V.

That the plaintiff ought not to be permitted to allege and assert that it is the owner and entitled to the possession of said part of said "Grant" claim, or any other portion thereof, because that ever since said 9th day of January, 1899, this answering defendant, the Pacific Coal & Transportation Company, its predecessors and grantors, were the owners of the said Grant claim, as above described by metes and bounds and in the exclusive possession thereof, and entitled to such exclusive possession, and because that ever since said 9th day of January, 1899, the defendant, the Pacific Coal & Transportation Company, its grantors and predecessors in interest, were, have been and now are, in the uninterrupted, open, adverse and notorious possession of the whole of said Grant placer claim and the conflict area thereof, and have been engaged for more than seven (7) years last past in operating, mining and developing the said premises and particularly the part in controversy in this action, with full knowledge and notice on the part of said plaintiff, and without any objection, interruption or complaint on its behalf; that the defendant, Pacific Coal & Transportation Company, and its les-

sees have expended large sums of money in mining, prospecting and developing the said area in conflict of said Grant claim, without objection or complaint of, from or on behalf of said plaintiff, and with its full knowledge, ever since the location thereof, on January 9th, 1899.

VI.

That by reason of the premises above stated, the plaintiff is estopped from alleging and asserting that it is the owner of any part or portion of the said Grant placer [30] claim as above described, or that it is entitled to the possession thereof.

And for a fifth further, separate and affirmative answer to plaintiff's complaint, this answering defendant alleges:

I.

That at all the times mentioned in plaintiff's complaint the defendant, Pacific Coal & Transportation Company its grantors and predecessors in interest, and its lessees, were and are in the actual, open, exclusive, notorious and uninterrupted possession of the premises now being mined by it and its lessee, a portion of which is covered and described by the description set forth in paragraph IV of plaintiff's complaint, and said defendant and its grantors and predecessors in interest, have at all times been such owners under and by virtue of valid and subsisting mining locations, the exterior boundaries of which were and are well marked and defined on the ground by permanent monuments and marks surrounding the mining works and operations of its lessee, M. D. McCumber, and answering defendant and its said

lessee are in the possession and entitled to the possession of the same by reason thereof.

And for a sixth further, separate and affirmative answer to plaintiff's complaint, this answering defendant alleges:

I.

That at all times mentioned in plaintiff's complaint the defendant Pacific Coal & Transportation Company, its grantors [31] and predecessors in interest, and its lessees, were and are in the actual, open, exclusive, notorious and uninterrupted possession of the land and premises named and called Bench No. 1 at the western base of Anvil Mountain, and also named and called Moonlight or Grant Claim, described by metes and bounds as follows:

Commencing at the initial stake which is situated near the east center end of what is known as the Robert Lyng placer claim near Moonlight Springs, in the Cape Nome Mining and Recording District, District of Alaska, running thence S. 9° 44' W. 312.4 ft. to stake No. 1; thence N. 79° 59' E. 1268.5 ft. to stake No. 2; thence N. 00° 11' E. 650 ft. to stake No. 3; thence S. 79° 58' W. 1280.7 ft. to stake No. 4; thence S. 10° 00' E. 393 ft. to the initial stake or place of beginning.

and these answering defendants were and are in such actual, open, exclusive and uninterrupted possession of said lands and premises above described, under and by virtue of a valid and subsisting mining location made by its grantor on the 9th day of January, 1899, under and in accordance with the mineral land laws of the United States, and the defendants and

their grantors and predecessors in interest were in the possession of the said lands and premises on the 7th day of November, 1910, the date when the plaintiff commenced the above-entitled action, and for more than ten years prior thereto had been and were in open, exclusive, notorious, uninterrupted possession of the whole of said lands and premises.

II.

That on the date when the plaintiff commenced the above-entitled action, to wit, on the 7th day of November, 1910, the said plaintiff's said cause of action was barred by the provisions of sections 3 and 4 of chapter 2, Part IV of the Civil Code of Alaska, and by virtue of section 361 of chapter 38, Part IV of the Civil Code of Alaska.

III.

That by reason of the said possession by these answering [32] defendants, their grantors and predecessors in interest of the lands and premises in controversy in this action, as above described, for a period of more than ten (10) years immediately preceding the commencement of this action, the said plaintiff is barred from maintaining and prosecuting this action under the sections above referred to and set forth.

And for a seventh further, separate and affirmative answer to plaintiff's complaint, this answering defendant alleges:

I.

That the defendant, Pacific Coal & Transportation Company, a corporation, is now and was at the time of the commencement of this suit, the owner in fee

(subject only to the paramount title of the United States) of the land and premises hereinafter described and known as Bench No. 1 at the base of Anvil Mountain, and also called the "Moonlight" or "Grant" claim, under and by virtue of a valid location thereof as a placer mining claim made by one W. N. Grant on the 9th day of January, 1899; that on said 9th day of January, 1899, the lands and premises hereinafter described and embraced within said location, were vacant, unoccupied and unappropriated mineral lands belonging to the Government of the United States and on said 9th day of January, 1899, the said W. N. Grant entered thereon and located the same for a placer mining claim under the mineral land laws of the United States, and then and there performed each and every act thereon required by law to perfect and make a valid placer mining location of Government placer mineral land; that the said claim as thus located by said [33] Grant was by him named and called No. 1 Bench, and subsequently named and called "Moonlight" or "Grant" claim, and contained at the time of the original location thereof, by the said Grant an area, approximately, of twenty (20) acres; that said placer mining claim is described by metes and bounds as follows, to-wit:

Commencing at the initial stake which is situated near the east center end of what is known as the Robert Lyng placer claim near Moonlight Springs, in the Cape Nome Mining and Recording District, District of Alaska, running thence S. 9° 44' W. 312.4 ft. to stake No. 1; thence N.

79° 59' E. 1268.5 ft. to stake No. 2; thence N. 00° 11' E. 650 ft. to stake No. 3; thence S. 79° 58' W. 1280.7 ft. to stake No. 4; thence S. 10° 00' E. 393 ft. to the initial stake or place of beginning.

II.

That subsequent to the said 9th day of January, 1899, and after the location of said land as mineral land as above described by said W. N. Grant, and while the same was a valid and subsisting placer location under the mineral land laws of the United States, by mesne conveyances from said W. N. Grant and his grantees, the defendant, Pacific Coal & Transportation Company, a corporation, became the owner in fee (subject only to the paramount title of the United States) of the whole of said placer claim, and entered into exclusive, open, and notorious possession of the whole of said claim, under and by virtue of the title acquired by and from the said W. N. Grant; and ever since the said 9th day of January, 1899, the said defendant, Pacific Coal & Transportation Company, its grantors and predecessors in interest and its lessees, have been in the uninterrupted, sole, exclusive and notorious possession of the whole of said placer claim.

III.

That during all of the times heretofore mentioned and while defendants, their grantors and predecessors in interest [34] were in such possession of the lands and premises in this controversy as above described, and on or about the —— day of ——, 1901, the plaintiff, Pioneer Mining Company, was organized under the laws of the State of Washing-

ton; that for a long time prior to such organization Jafet Lindeberg, John Brynteson and Erick O. Lindblom, the organizers and principal stockholders of the said plaintiff Pioneer Mining Company, were doing business at Nome, Alaska, as a copartnership known as and called the Cape Nome Pioneer Company and also the Pioneer Company and also Lindeberg, Brynteson & Lindblom, and were the owners and predecessors of the Pioneer Mining Company, a corporation, to all of the lands and premises acquired by the said plaintiff corporation, at the time of its organization; that the said Jafet Lindeberg is now and has been at all times since the organization of the plaintiff corporation, in 1901, the president and general manager of said Pioneer Mining Company, plaintiff herein.

IV.

That between the years 1900 and 1904, the said Jafet Lindeberg, John Brynteson and Erick O. Lindblom were copartners and doing business under the firm name and style of the Moonlight Springs Water Company, at Nome, Alaska, and during the year 1903, were the owners and in the possession of a certain placer mining claim known as and called the Moonlight claim, located by Robert Lyng in the month of November, 1898, and situated adjoining and west of the premises claimed and described by the defendants in this action; that the said Moonlight Springs Water Company was engaged in bartering and selling water to the town of Nome, conveying the same from a natural spring situated on said placer claim near the west end of the placer claim of defendants. [35]

V.

That on the 18th day of May, 1903, the said Moonlight Springs Water Company, as then constituted, consisted of said Jafet Lindeberg, Erick O. Lindblom and John Brynteson, copartners, began an action in the above-entitled court, being Cause #921, entitled Jafet Lindeberg et al., plaintiffs, vs. George Doverspike et al., defendants; that the defendants in said action, George Doverspike, C. T. Howard, George Crawford and Fred Williams were lessees of the defendant, Pacific Coal & Transportation Company under a written lease executed in the fall of 1902, expiring the month of June, 1903, upon the land and premises described herein, as the Grant claim, and were working and mining the said claim and extracting the gold from the same by means of mining and depositing the same in dumps of pay gravel upon the surface of the westerly half of said Grant claim as above described, and near the easterly end of said Moonlight claim, and within the boundaries of the ground in controversy in this action.

VI.

That in and by the said action commenced as above alleged, the said Moonlight Springs Water Company sought to enjoin the said lessees, Doverspike et al. from carrying on their mining operations upon the ground and for the reason alleged in the complaint in said action, that said lessees were polluting the waters of Moonlight Springs the source from which the said Moonlight Water Company obtained its supply of water for its market; that the said lessees filed their answer in the said action, setting up the title of the

defendant, Pacific Coal & Transportation Company in and to the land and premises in controversy in this action, and setting forth their lease of the same; that a temporary restraining order was issued in said action on behalf of said plaintiff, Moonlight Springs [36] Water Company, and against the said lessees and subsequently upon the hearing on the merits, the same was dissolved; that thereafter the said lessees, George Doverspike et al., began an action in the above-entitled court on the 29th day of June, 1904, being Cause #1147, entitled C. T. Howard, Frank Doverspike, George Crawford, plaintiffs, vs. Jafet Lindeberg, Erick O. Lindblom and John Brynteson, copartners doing business under the firm name and style of the Moonlight Springs Water Company et al., defendants; that the said action was thereafter tried and on the 17th day of April, 1909, a judgment was obtained against the said defendants for the sum of Twenty-five Hundred Dollars (\$2500.00) and costs of suit; that thereafter the said defendants paid and satisfied the said judgment in the month of October, 1909.

That during all of the times hereinbefore mentioned while all of said litigation was pending, the said Jafet Lindeberg was the president and general manager of the plaintiff, Pioneer Mining Company, in this action, and had personal charge of all of its mining affairs and business transactions within the District of Alaska; that during all of the said times herein mentioned, the said plaintiff, Pioneer Mining Company, recognized the title of the defendant, Pacific Coal & Transportation Company, and its lessees

in and to the land and premises in controversy in this action, and never at any time during all of said litigation, asserted any claim or title thereto, and never claimed or asserted ownership, possession or title thereto but at all times recognized the defendant and its laymen as being the owners in the possession and entitled to the possession of said lands and premises now in controversy; that in the year 1906 the Moonlight Water Company, a corporation, was organized by the then owners thereof, the said Moonlight Springs Water Company, a copartnership and thereafter during all the time that the said litigation was pending, the said Moonlight Water [37] Company, a corporation, was a subsidiary corporation organized, managed, operated and owned by the plaintiff, Pioneer Mining Company, and its said principal stockholders and officers, Jafet Lindeberg, Erick O. Lindblom and John Brynteson, were the officers and principal stockholders of the said Moonlight Water Company during all of said time.

VII.

That by reason of the matters and things above alleged the plaintiff, Pioneer Mining Company, ought not and should not be permitted to now claim or assert ownership or title to the lands and premises in controversy, in this action; that by reason of the matters and things herein alleged the plaintiff is estopped from asserting any right, title or interest whatsoever in or to the land and premises in controversy in this action.

WHEREFORE, this answering defendant demands judgment as follows:

1. That the said complaint of plaintiff be dismissed.

2. That it be adjudged and decreed that the defendant, Pacific Coal & Transportation Company, is the owner in fee of the whole of said Grant claim, as above described.

3. That it be adjudged and decreed that the title to the ground in controversy be quieted and confirmed in this answering defendant, subject to the leasehold estate of the defendant, M. D. McCumber.

4. That it be decreed and adjudged that the plaintiff has no claim, estate, interest or demand in or to any part or portion of the said "Grant" claim as above described.

5. That it be adjudged and decreed that the plaintiff be forever barred and enjoined from asserting any claim, right, [38] title, interest or estate in and to any part or portion of the said "Grant" claim as above described.

6. That this answering defendant do have and recover its costs and disbursements in this action.

7. For such other and further relief as may seem meet and proper to the Court.

ELWOOD BRUNER,

Attorney for Answering Defendant Pacific Coal & Transportation Company.

United States of America,

District of Alaska,—ss.

J. Allison Bruner, being first duly sworn, deposes and says:

That he is attorney in fact for the Pacific Coal & Transportation Company, the answering defendant

herein; that he has heard read the above and foregoing answer, knows the contents thereof, and the same is true as he verily believes.

J. ALLISON BRUNER.

Subscribed and sworn to before me this 4th day of November, 1911.

[Notarial Seal] WILLIAM A. GILMORE,
Notary Public in and for the District of Alaska.
Rec'd. copy this 4th day of Nov., 1911.

O. D. COCHRAN,
Of Attys. for Plf.

[Endorsed]: Original. No. 2245. In the District Court for the District of Alaska, Second Division. Pioneer Mining Company, Plaintiff, vs. The Pacific Coal & Transportation Co., M. D. McCumber, Defendant. Amended Answer of Pacific Coal & Transportation Co. Filed in the office of the Clerk of the District Court of Alaska, Second Division, at Nome. Nov. 6, 1911. John Sundback, Clerk. By J. Allison Bruner, Deputy. Elwood Bruner, Attorney at Law, Nome, Alaska, Attorney for P. C. & T. Co. [39]

*In the District Court for the District of Alaska,
Second Division.*

No. 2245.

PIONEER MINING COMPANY, a Corporation,
Plaintiff,

vs.

THE PACIFIC COAL & TRANSPORTATION
COMPANY, a Corporation, M. D. McCUM-
BER, JOHN DOE and RICHARD ROE,
Defendants.

Amended Answer of Defendant M. D. McCumber.

Comes now defendant, M. D. McCumber, by leave of Court first had and obtained, and for an amended answer to plaintiff's complaint, admits, denies and alleges as follows:

I.

Admits paragraphs I and II of plaintiff's complaint.

II.

Denies each and every allegation, matter and thing contained in paragraph IV of plaintiff's complaint, and the whole thereof.

III.

Admits that the defendant the Pacific Coal & Transportation Company, a corporation, and this answering defendant, M. D. McCumber, claims, and each of them claim, an estate or interest in a portion of the premises mentioned in paragraph V of plaintiff's complaint, as hereinafter affirmatively stated and plead. [40]

IV.

Denies each and every allegation, matter and thing contained in paragraph VI and the whole thereof.

V.

Answering paragraph VII of plaintiff's complaint, defendant denies each and every allegation, matter and thing therein contained, save and except that the said premises described are of great value.

And for a first, further, separate and affirmative answer to plaintiff's complaint, this answering defendant alleges:

I.

That the defendant, Pacific Coal & Transportation Company, a corporation, is now and was at the time of the commencement of this suit, the owner in fee (subject only to the paramount title of the United States) of the land and premises hereinafter described and known as Bench No. 1 at the base of Anvil Mountain, and also called the "Moonlight" or "Grant" claim, under and by virtue of a valid location thereof as a placer mining claim, made by one W. N. Grant, on the 9th day of January, 1899; that on said 9th day of January, 1899, the lands and premises hereinafter described and embraced within said location, were vacant, unoccupied and unappropriated mineral land laws of the United States, and then and mineral lands belonging to the government of the United States and on said 9th day of January, 1899, the said W. N. Grant entered thereon and located the same for a placer mining claim under [41] the mineral land laws of the United States, and then and there performed each and every act thereon required

by law to perfect and make a valid placer mining location of Government placer mineral land; that the said claim as thus located by said Grant, was by him named and called No. 1 Bench, and subsequently named and called "Moonlight" or "Grant" claim, and contained at the time of the original location thereof, by the said Grant an area, approximately, of twenty (20) acres; that said placer mining claim is described by metes and bounds, as follows, to wit:

Commencing at the initial stake which is situated near the east center end of what is known as the Robert Lyng placer claim near Moonlight Springs, in the Cape Nome Mining and Recording District, District of Alaska, running thence S. $9^{\circ} 41'$ W. 312.4 feet to stake No. 1; thence N. $79^{\circ} 59'$ E. 1268.5 ft. to stake No. 2; thence N. $00^{\circ} 11'$ E. 650 ft. to stake No. 3; thence S. $79^{\circ} 58'$ W. 1280.7 ft. to stake No. 4; thence S. $10^{\circ} 00'$ E. 393 ft. to the initial stake or place of beginning.

II.

That subsequent to the said 9th day of January, 1899, and after the location of said land as mineral land as above described by said W. N. Grant, and while the same was a valid and subsisting placer location under the mineral land laws of the United States, by mesne conveyances from said W. N. Grant and his grantees, the defendant Pacific Coal & Transportation Company, a corporation, became the owner in fee (subject only to the paramount title of the United States) of the whole of said placer claim, and entered into exclusive, open and notorious possession of the whole of said claim, under and by virtue of the

title acquired by and from the said W. N. Grant; and ever since the said 9th day of January, 1899, the said Defendant, Pacific Coal & Transportation Company, its grantors and predecessors in interest and its lessees, have been in the uninterrupted, sole, exclusive and notorious possession of the whole of said placer claim. [42]

III.

That on the 15th day of August, A. D. 1908, the said defendant, Pacific Coal & Transportation Company, was *so the* owner of said claim, and was then and there in the sole, quiet, exclusive, uninterrupted and notorious possession of the said claim and the whole thereof, and on said date the said defendant Pacific Coal & Transportation Company did, by an instrument in writing, lease, let and demise the whole of said placer claim to this answering defendant, M. D. McCumber, who thereupon immediately entered into the exclusive possession of the whole of said claim, and commenced to mine and prospect the same for gold, in accordance with the terms of said lease; that thereafter on the first day of May, 1909, for a valid consideration, the term of said lease was extended in writing, and thereafter on the 28th day of April, 1911, the term of said lease was again extended in writing; that ever since said 15th day of August, 1908, this answering defendant, M. D. McCumber, has been in the exclusive possession of the said mining claim, under and by virtue of said written lease and the said written extensions thereof, and has kept and performed the covenants thereof on his part to be kept and per-

formed; and this answering defendant, M. D. McCumber, has and claims the leasehold estate mentioned in said written instruments, and the exclusive right of possession of the whole of said mining claim, and the right to mine the same under the terms, conditions and covenants of said written lease and extensions thereof; that a copy of said lease and written extensions thereof are hereunto attached, marked Exhibits "A," "B" and "C."

IV.

That the alleged placer mining claim described in paragraph IV of plaintiff's complaint, and called by plaintiff Bench Claim No. 1, Moonlight Creek, near Moonlight Springs, covers and embraces as described in said paragraph, an overlap [43] of a large portion of the westerly end of said Grant claim above described, and now in the possession of this answering defendant as above mentioned, the exact boundaries and limitations claimed by the said plaintiff being unknown to this answering defendant, but that said plaintiff has no right, title, interest or estate in and to the said part or portion so claimed of said "Grant" claim, but wrongfully and unlawfully and without right, asserts title and ownership thereto; that said plaintiff has no right, title, interest, ownership or possession of, in or to any of the lands or premises embraced within the said "Grant" placer claim above described by metes and bounds, and the said plaintiff has not now and never has had, the possession or right of possession in and to any part or portion thereof; that this answering defendant, under and by virtue of his said

leasehold estate is in the possession and is entitled to the exclusive possession of the whole of said Grant placer claim.

And for a second, further, separate and affirmative defense to plaintiff's complaint, this answering defendant alleges:

I.

That the defendant, Pacific Coal & Transportation Company, its grantors and predecessors in interest, and this answering defendant as lessee of said defendant, Pacific Coal & Transportation Company, has had the uninterrupted, adverse, notorious and exclusive possession of the whole of that certain placer mining claim known as and called No. 1 Bench; also called Moonlight or Grant claim, and described by metes and bounds [44] as follows, to wit:

Commencing at the initial stake which is situated near the east center end of what is known as the Robert Lyng Placer Claim, near Moonlight Springs, in the Cape Nome Mining and Recording District, District of Alaska, running thence S. $9^{\circ} 44'$ W., 312.4 ft. to stake No. 1; thence N. $79^{\circ} 59'$ E. 1268.5 ft. to stake No. 2; thence N. $00^{\circ} 11'$ E. 650 ft. to stake No. 3; thence S. $79^{\circ} 58'$ W. 1280.7 ft. to stake No. 4; thence S. $10^{\circ} 00'$ E. 393 ft. to the initial stake or place of beginning.

under and by virtue of a valid and subsisting mineral location thereof made by one W. N. Grant, on the 9th day of January, 1899, in compliance with the mineral land laws of the United States and this

answering defendant, and his lessor, the said defendant, Pacific Coal & Transportation Company, its grantors and predecessors in interest, have been in such uninterrupted, adverse, notorious and exclusive possession of the whole of said placer claim under color and claim of said title by reason of said Grant location ever since said 9th day of January, 1899.

And for a third, further and affirmative defense to plaintiff's complaint, this answering defendant alleges as follows:

I.

That on the 7th day of November, 1910, the date upon which the plaintiff instituted the above-entitled suit, and for a long time prior thereto, and ever since, this answering defendant was in the exclusive, open and notorious possession of the whole of that certain placer mining claim known as and called Bench No. 1 at the base of Anvil Mountain, also called Moonlight or Grant claim, under and by virtue of a valid and subsisting mineral location made by one W. N. Grant, on the 9th day of January, 1899. [45]

II.

That the alleged placer claim as described in paragraph IV of plaintiff's complaint, overlaps and conflicts with the westerly portion of the said Bench No. 1 at the base of Anvil Mountain or Moonlight or Grant claim above described; that on said 7th day of November, 1910, and for a long time prior thereto, this answering defendant was in the possession of the whole of said Grant Placer Mining Claim, and

was actively engaged in mining on the portion of said claim embraced within the alleged conflict and this answering defendant had, on said conflict area a mining cabin, mining tools, implements and mining equipment at said time, and for a long time prior thereto, and was actively engaged in prospecting and mining thereon.

III.

That the plaintiff, Pioneer Mining Company, was not in possession of said conflict area or any part thereof, and had no right, title, interest or estate therein, and had not on said date, or at any time since said date, the possession of or the right to mine or prospect the same, or to maintain the above entitled action in equity.

And for a fourth, further, separate and affirmative defense to plaintiff's complaint, this answering defendant alleges:

I.

That on the 9th day of January, 1899, one W. N. Grant made a valid and subsisting placer mining location, known as and called No. 1 Bench, sometimes called Moonlight or Grant [46] claim and described by metes and bounds as follows:

Commencing at the initial stake which is situated near the east center end of what is known as the Robert Lyng placer claim near Moonlight Springs, in the Cape Nome Mining and Recording District, District of Alaska, running thence S. $90^{\circ} 44'$ W. 312.4 ft. to stake No. 1; thence N. $79^{\circ} 59'$ E. 1268.5 ft. to stake No. 2; thence N. $00^{\circ} 11'$ E. 650 ft. to stake No. 3; thence

S. 79° 58' W. 1280.7 ft. to stake No. 4; thence S. 10° 00' E. 393 ft. to the initial stake or place of beginning.

II.

That thereafter by mesne conveyances the defendant, Pacific Coal & Transportation Company, succeeded to all of the rights of the said Grant in and to the said placer claim, and the said defendant, Pacific Coal & Transportation Company, is now the owner in fee (subject only to the paramount title of the United States) of said placer mining claim.

III.

That this answering defendant, by virtue of a written lease and written extensions thereof, is now, and ever since the 15th day of August, 1908, has been in the possession of and entitled to the possession of the whole of said claim as lessee for a term of years yet unexpired.

IV.

That the plaintiff in the above-entitled action, in paragraph IV of its complaint, asserts ownership, title and possession to a large portion of the westerly part of said Grant placer claim, as described in said paragraph IV of said complaint.

V.

That the plaintiff ought not to be permitted to allege and assert that it is the owner and entitled to the possession of said part of said Grant claim, or any other portion thereof, because that ever since said 9th day of January, [47] 1899, this answering defendant, and his lessor, the defendant,

Pacific Coal & Transportation Company, its predecessors and grantors, were the owners of the said Grant claim as above described by metes and bounds and in the exclusive possession thereof and entitled to such exclusive possession and because that ever since said 9th day of January, 1899, the defendant, Pacific Coal & Transportation Company and this answering defendant, their grantors and predecessors in interest, were, have been and now are in the uninterrupted, open, adverse and notorious possession of the whole of said Grant placer claim, and the conflict area thereof, and have been engaged for more than seven (7) years last past in operating, mining and developing said premises and particularly the part in controversy in this action, with full knowledge and notice on the part of said plaintiff and without any objection, interruption or complaint on its behalf; that the defendant, Pacific Coal & Transportation Company, and its lessees, have expended large sums of money in mining, prospecting and developing the said area in conflict of said Grant claim, without objection or complaint of from or on behalf of said plaintiff, and with its full knowledge, ever since the location thereof, on January 9th, 1899.

VI.

That by reason of the premises above stated, the plaintiff is estopped from alleging and asserting that it is the owner of any part or portion of the said Grant placer mining claim as above described, or that it is entitled to the possession thereof. [48]

And for a fifth further, separate and affirmative

answer to plaintiff's complaint, this answering defendant alleges:

I.

That at all the times mentioned in plaintiff's complaint the defendant, Pacific Coal & Transportation Company, its grantors and predecessors in interest, and this answering defendant, M. D. McCumber, were and are in the actual, open, exclusive, notorious and uninterrupted possession of the premises now being mined by them, a portion of which is covered and described by the description set forth in paragraph IV of plaintiff's complaint, and said defendants, and their grantors and predecessors in interest, have at all times been such owners under and by virtue of valid and subsisting mining locations the exterior boundaries of which were and are well marked and defined on the ground by permanent monuments and marks surrounding the mining works and operations of this answering defendant, and answering defendant is in the possession and entitled to the possession of the same by reason thereof.

And for a sixth further, separate affirmative answer to plaintiff's complaint this answering defendant alleges:

I.

That at all the times mentioned in plaintiff's complaint the defendant the Pacific Coal & Transportation Company, its grantors and predecessors in interest, and this answering defendant, M. D. McCumber, were and are in the actual, open, [49] exclusive, notorious and uninterrupted possession

of the lands and premises named and called Bench No. 1 at the western base of Anvil Mountain, and also named and called Moonlight or Grant Claim, described by metes and bounds as follows:

Commencing at the initial stake which is situated near the east center end of what is known as the Robert Lyng placer claim near Moonlight Springs, in the Cape Nome Mining and Recording District, District of Alaska, running thence S. $9^{\circ} 44'$ W. 312.4 ft. to stake No. 1; thence N. $79^{\circ} 59'$ E. 1268.5 ft. to stake No. 2; thence N. $00^{\circ} 11'$ E. 650 ft. to stake No. 3; thence S. $79^{\circ} 58'$ W. 1280.7 ft. to stake No. 4; thence S. $10^{\circ} 00'$ E. 393 ft. to the initial stake or place of beginning.

and these defendants were and are in such actual, open, exclusive and uninterrupted possession of said lands and premises above described, under and by virtue of a valid and subsisting mining location made by their grantor on the 9th day of January, 1899, under and in accordance with the mineral land laws of the United States, and the defendants and their grantors and predecessors in interest were in the possession of the said lands and premises on the 7th day of November, 1910, the date when the plaintiff commenced the above-entitled action and for more than ten years prior thereto had been and were in the open, exclusive, notorious, uninterrupted possession of the whole of said lands and premises.

II.

That on the date when the plaintiff commenced

the above-entitled action, to wit, on the 7th day of November, 1910, the said plaintiff's said cause of action was barred by the provisions of sections 3 and 4 of chapter 2, Part IV of the Civil Code of Alaska, and by virtue of section 361 of chapter 38, Part IV of the Civil Code of Alaska.

III.

That by reason of the said possession by these defendants their grantors and predecessors in interest of the [50] lands and premises in controversy in this action, as above described, for a period of more than ten (10) years immediately preceding the commencement of this action, the said plaintiff is barred from maintaining and prosecuting this action under the sections above referred to and set forth.

And for a seventh further, separate and affirmative answer to plaintiff's complaint, this answering defendant alleges:

I.

That the defendant, Pacific Coal & Transportation Company, a corporation, is now and was at the time of the commencement of this suit, the owner in fee (subject only to the paramount title of the United States) of the land and premises hereinafter described and known as Bench No. 1 at the base of Anvil Mountain, and also called the "Moonlight" or "Grant" claim, under and by virtue of a valid location thereof as a placer mining claim, made by one W. N. Grant on the 9th day of January, 1899; that on said 9th day of January, 1899, the lands and premises hereinafter described and embraced within

said location, were vacant, unoccupied and unappropriated mineral lands belonging to the Government of the United States and on said 9th day of January, 1899, the said W. N. Grant entered thereon and located the same for a placer mining claim under the mineral land laws of the United States, and then and there performed each and every act thereon required by law to perfect and make a valid placer mining location of Government placer mineral land; that the said claim as thus located by said Grant was by him named and called No. 1 Bench, and subsequently [51] named and called "Moonlight" or "Grant" claim, and contained at the time of the original location thereof, by the said Grant an area, approximately, of twenty (20) acres; that said placer mining claim is described by metes and bounds as follows, to wit:

Commencing at the initial stake which is situated near the east center end of what is known as the Robert Lyng placer claim near Moonlight Springs, in the Cape Nome Mining and Recording District, District of Alaska, running thence S. $9^{\circ} 44'$ W. 312.4 ft. to stake No. 1; thence N. $79^{\circ} 59'$ E. 1268.5 ft. to stake No. 2; thence N. $00^{\circ} 11'$ E. 650 ft. to stake No. 3; thence S. $79^{\circ} 58'$ W. 1280.7 ft. to stake No. 4; thence S. $10^{\circ} 00'$ E. 393 ft. to the initial stake or place of beginning.

II.

That subsequent to the said 9th day of January, 1899, and after the location of said land as mineral land as above described by said W. N. Grant, and

while the same was a valid and subsisting placer location under the mineral land laws of the United States, by mesne conveyances from said W. N. Grant and his grantees, the defendant Pacific Coal and Transportation Company, a corporation, became the owner in fee (subject only to the paramount title of the United States) of the whole of said placer claim, and entered into exclusive, open and notorious possession of the whole of said claim, under and by virtue of the title acquired by and from the said W. N. Grant; and ever since the said 9th day of January, 1899, the said defendant, Pacific Coal & Transportation Company, its grantors and predecessors in interest and its lessees, have been in the uninterrupted, sole, exclusive and notorious possession of the whole of said placer claim.

III.

That during all of the time heretofore mentioned and while defendants, their grantors and predecessors in interest were in such possession of the lands and premises in this controversy, as above described, and on or about the ——— [52] day of ———, 1901, the plaintiff, Pioneer Mining Company, was organized under the laws of the State of Washington; that for a long time prior to such organization Jafet Lindeberg, John Brynteson and Erick O. Lindholm, the organizers, and principal stockholders of the said plaintiff Pioneer Mining Company, were doing business at Nome, Alaska, as a copartnership known as and called the Cape Nome Pioneer Company and also the Pioneer Company and also Lindeberg, Brynteson & Lindblom, and

were the grantors and predecessors of the Pioneer Mining Company, a corporation, to all of the lands and premises acquired by the said plaintiff corporation, at the time of its organization; that the said Jafet Lindeberg is now and has been at all times since the organization of the plaintiff corporation, in 1901, the president and general manager of said Pioneer Mining Company, plaintiff herein.

IV.

That between the years 1900 and 1904, the said Jafet Lindeberg, John Brynteson and Erick O. Lindblom were copartners and doing business under the firm name and style of the Moonlight Springs Water Company, at Nome, Alaska, and during the year 1903, were the owners and in the possession of a certain placer mining claim known as and called the Moonlight claim, located by Robert Lyng in the month of November, 1898, and situated adjoining and west of the premises claimed and described by the defendants in this action; that the said Moonlight Springs Water Company was engaged in bartering and selling water to the town of Nome, conveying the same from a natural spring situated on said placer claim near the west end of the placer claim of defendants.

V.

That on the 18th day of May, 1903, the said Moonlight Springs Water Company, as then constituted, consisting of said [53] Jafet Lindeberg, Erick O. Lindblom and John Brynteson, copartners, began an action in the above-entitled court, being Cause #921, entitled Jafet Lindeberg et al., plaintiffs, vs. George

Doverspike et al., defendants; that the defendants in said action, George Doverspike, C. T. Howard, George Crawford and Fred Williams, were lessees of the defendant, Pacific Coal & Transportation Company, under a written lease executed in the fall of 1902, expiring the month of June, 1903, upon the land and premises described herein, as the Grant claim and were working and mining the said claim and extracting the gold from the same by means of mining and depositing the same in dumps of pay gravel upon the surface of the westerly half of said Grant claim as above described, and near the easterly end of said Moonlight claim, and within the boundaries of the ground in controversy in this action.

VI.

That in and by the said action commenced as above alleged, the said Moonlight Springs Water Company sought to enjoin the said lessees, Doverspike et al., from carrying on their mining operations upon the grounds, and for the reason alleged in the complaint in said action, that said lessees were polluting the waters of Moonlight Springs the source from which the said Moonlight Water Company obtained its supply of water for its market; that the said lessees filed their answer in the said action, setting up the title of the defendant, Pacific Coal & Transportation Company in and to the land and premises in controversy in this action, and setting forth their lease of the same; that a temporary restraining order was issued in said action on behalf of said plaintiff, Moonlight Springs Water Company, and against the

said lessees and subsequently, upon the hearing on the merits, the same was dissolved; that thereafter the said lessees, George Doverspike et al., began [54] an action in the above-entitled court on the 29th day of June, 1904, being Cause #1147, entitled C. T. Howard, Frank Doverspike, George Crawford, plaintiffs, vs. Jafet Lindeberg, Erick O Lindblom and John Brynteson, copartners doing business under the firm name and style of the Moonlight Springs Water Company et al., defendants; that the said action was thereafter tried and on the 17th day of April, 1909, a judgment was obtained against the said defendants for the sum of Twenty-five Hundred Dollars (\$2,500.00) and costs of suit; that thereafter the said defendants paid and satisfied the said judgment in the month of October, 1909.

That during all of the times hereinbefore mentioned while all of said litigation was pending, the said Jafet Lindeberg was the president and general manager of the plaintiff, Pioneer Mining Company, in this action, and had personal charge of all of its mining affairs and business transacted within the District of Alaska; that during all of the said times herein mentioned, the said plaintiff, Pioneer Mining Company, recognized the title of the defendant, Pacific Coal & Transportation Company, and its lessees in and to the land and premises in controversy in this action, and never at any time during all of said litigation, asserted any claim of title thereto, and never claimed or asserted ownership, possession or title thereto, but at all times recognized the defendant and its laymen as being the owners, in the pos-

session and entitled to the possession of said lands and premises now in controversy; that in the year 1906 the Moonlight Water Company, a corporation, was organized by the then owners thereof, the said Moonlight Springs Water Company a copartnership and thereafter during all the time that the said litigation was pending, the said Moonlight Water Company, a corporation, was a subsidiary corporation organized, managed, operated and owned by the plaintiff, Pioneer Mining Company, and its said principal stockholders and officers, [55] Jafet Lindeberg, Erick O. Lindblom and John Brynteson, were the officers and principal stockholders of the said Moonlight Water Company during all of said time.

VII.

That by reason of the matters and things above alleged the plaintiff, Pioneer Mining Company, ought not and should not be permitted to now claim or assert ownership or title to the lands and premises in controversy in this action; that by reason of the matters and things herein alleged the plaintiff is estopped from asserting any right, title or interest whatsoever in or to the land and premises in controversy in this action.

WHEREFORE, this answering defendant demands judgment as follows:

1. That the said complaint of plaintiff be dismissed.

2. That it be adjudged and decreed that the defendant, Pacific Coal & Transportation Company, is the owner in fee of the whole of the said Grant

claim, as above described.

3. That it be adjudged and decreed that this answering defendant is the owner of a leasehold estate in the said premises above described, for a term of years as mentioned in the said written lease and written extensions thereof, and that this answering defendant is entitled to the exclusive possession of the whole of said placer claim as above described by metes and bounds.

4. That it be adjudged and decreed that the plaintiff be forever barred and enjoined from asserting any claim, right, title, interest or estate in and to any part or portion of the said "Grant" claim as above described. [56]

5. That it be decreed and adjudged that the plaintiff has no claim, estate, interest or demand in or to any part or portion of said "Grant" claim as above described.

6. That this answering defendant do have and recover his costs and disbursements in this action.

7. For such other and further relief as may seem meet and proper to the Court.

GEO. B. GRIGSBY and

WILLIAM A. GILMORE,

Attorneys for Answering Defendant, M. D. McCumber.

United States of America,

District of Alaska,—ss.

M. D. McCumber, being first duly sworn, deposes and says:

That he is one of the defendants in the above-entitled action, and the answering defendant herein, that he has heard read the above and foregoing an-

swer, knows the contents thereof and the same is true as he verily believes.

M. D. McCUMBER.

Subscribed and sworn to before me this 4th day of November, A. D. 1911.

[Notarial Seal] WILLIAM A. GILMORE,
Notary Public in and for the District of Alaska.
[57]

Exhibit "A" [to Answer of Defendant M. D. McCumber].

MINING CLAIM LEASE.

THIS INDENTURE, made and entered into this fifteenth day of August, A. D. 1908, by and between the PACIFIC COAL & TRANSPORTATION COMPANY, a corporation organized and existing under and by virtue of the laws of the state of Maine, and doing business in the District of Alaska, party of the first part, hereinafter called the lessor, and MENZO D. McCUMBER of Nome, District of Alaska, party of the second part, hereinafter called the lessee;—

WITNESSETH: That the said lessor, for and in consideration of the rents, royalties, covenants and agreements hereinafter reserved, and by the said lessee to be paid, kept and performed, has granted, demised, leased and let and by these presents does grant, demise, lease and let unto the said lessee, that certain mine and mining property situate in the Cape Nome Mining and Recording District, District of Alaska, and more particularly described as follows, to wit:—

Bench Claim number one (1) at Western base of

Anvil mountain, also known as and called "MOON-LIGHT" or "GRANT" claim, containing twenty (20) acres, being the same claim located by W. N. Grant, on January 9, 1899, notice of location of which said claim is recorded in the office of the Recorder of the Cape Nome Mining and Recording District, in Book 3, page 59, together with the appurtenances, and rights and privileges to prospect the same for gold, precious metals and minerals, and to mine and extract the same, and reduce the same to any commercial value.

TO HAVE AND TO HOLD, unto the said lessee for the term of three (3) years from the first day of October, A. D. 1908, expiring at noon on the first day of October, A. D. 1911, unless sooner forfeited or determined through the violation of [58] any covenant hereinafter against the said lessee reserved.

And in consideration of the said lease, demise and privileges, the said lessee does hereby covenant and agree with the said lessor, as follows, to wit:

To enter upon said mining claim and premises and work the same mining fashion, in manner necessary to good economical mining, so as to take out the greatest amount of gold, precious metals and minerals possible with due regard to the safety, development and preservation of the said premises as a workable mine.

To work and mine said premises as aforesaid as steadily and continuously from the date of this lease as weather and the season of the year will permit.

To keep all sluices, ditches, drains, waterways and passageways cleared of loose rock and rubbish, and to

do all things necessary to promote the usefulness of said mining property as a workable mine, and to develop the same and do not act thereon during the term of this lease, which would impede mining operations or impair the operating condition of said mining claim, and generally to so conduct operations as to conform to the laws of the United States and the District of Alaska, and the local rules and regulations of miners in said mining district, and to do no act and suffer no default which might in any manner involve the said lessor or its ownership in said mining property, in liability of any kind or character.

To not locate or record said mining property, or allow the same to be recorded by anyone except the said lessor or its agent. To not allow or permit any person or persons, except the said lessee, his agent or workmen, to take or hold possession of said premises, or any part thereof, under any pretense whatever. [59]

To not assign this lease, or any interest thereunder and to not sublet the said premises, or any part thereof, without the written consent of said lessor, or John T. Reed, its agent, in Nome, Alaska.

To pay and deliver to said lessor, as royalty and rent, twenty-five (25) per cent. of all gold, minerals and precious metals to be extracted from said premises during said term, of like assay as that retained by said lessee, at such place as said lessor or its agent shall direct, and to allow said lessor or its agent or representative to be present at each and every cleanup, and to inspect and examine the same.

To deliver up to said lessor the said premises with

the appurtenances and improvements, except machinery, buildings, tools and implements placed thereon by the lessee, to the said lessor in good order and condition, and the mine in all points ready for continued working (accidents not arising from negligence alone excusing) without demand or further notice, on said first day of October, A. D. 1911, at noon, or at any time previous upon demand for forfeiture.

The lessee hereby agrees to do at lease one hundred dollars' worth of work during the year 1908, as assessment work for said year 1908, upon said claim, hereby leased.

The right is hereby reserved by the lessor or its agent or representative, to enter upon and over said property hereby leased, at all reasonable times for the purpose of inspection.

Finally, upon the violation or failure to perform by said lessee, or any person or persons under him, of any covenant or covenants hereinbefore reserved, the term of this lease, and all the rights and privileges thereunder, shall, at the option of said lessor, expire and the same and said premises [60] with the appurtenances shall at once become forfeit to said lessor, and the said lessor or its agent or representative may thereupon, at the demand of possession in writing to be delivered to said lessee, or in his absence by posting said demand in a conspicuous place on said leased premises for the term of three days, enter upon said premises and dispossess all persons occupying the same, with or without force, and with or without process of law; or, at the option of said

lessor, the said lessee and all persons found in occupation may be proceeded against as trespassers from the beginning of said term, both as to realty and the metals and minerals severed therefrom; or as guilty of unlawful detainer.

Each and every clause and covenant of this indenture shall extend to the heirs, executors, administrators and successors of all parties hereto; and to the assigns or successors of said lessor; and as said lessor may elect to the assigns of said lessee.

IN WITNESS WHEREOF, the said parties hereto, lessor and lessee, have hereunto set their hands and seals, to duplicates hereof, the day and year first above written.

PACIFIC COAL & TRANSPORTATION
COMPANY, [Seal]

(Signed) By "ALBERT MERRILL,"

President,

(Signed) And "ALONZO ELLIOTT,"

Treasurer,

(Signed) "MENZO D. McCUMBER." [Seal]

Signed, sealed and delivered in presence of:

(Signed) "JOHN T. REED,"

As to Menzo D. McCumber. [61]

United States of America,
District of Alaska,
Second Division,—ss.

On this fifteenth day of August, A. D. 1908, before me the undersigned, a notary public in and for the District of Alaska, residing at Nome therein, appeared the within named MENZO D. McCUMBER, to me known to be the identical person mentioned in

and who executed the foregoing instrument, and acknowledged to me that he executed the same for the uses and purposes therein expressed.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my notarial seal, the day and year in this certificate first above written.

[Notarial Seal] (Signed) "JOHN T. REED,"
Notary Public in and for the District of Alaska,
residing at Nome, Alaska.

State of New Hampshire,
County Hillsborough,—ss.

On this eleventh day of September, A. D. 1908, before me, the undersigned, a notary public in and for the State of New Hampshire, residing at Manchester, therein, appeared the within named Albert Merrill and Alonzo Elliott, President and Treasurer respectively, of the Pacific Coal & Transportation Company, to me known to be the identical persons mentioned in and who executed the foregoing instrument and acknowledged to me that they executed the same for the uses and purposes therein expressed.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my notarial seal, the day and year in this certificate first above written.

[Notarial Seal] (Signed) "P. H. SULLIVAN,"
Notary Public in and for the State of New Hampshire, Residing at Manchester, N. H. [62]

Exhibit "B" [to Answer of Defendant M. D. McCumber].

For and in consideration of the sum of one (\$1.00) dollar to the PACIFIC COAL & TRANSPORTA-

TION COMPANY, a corporation, lessor, in the foregoing lease, paid this first day of May, 1909, by MENZO D. McCUMBER, lessee therein, the receipt whereof is hereby acknowledged, and in further consideration of the said Menzo D. McCumber doing at least one hundred (\$100.00) dollars worth of work upon said leased premises during each of the years 1909, 1910, 1911, 1912 and 1913, as assessment work thereon for each of said years, and furnishing said lessor, or John T. Reed, its agent in Alaska, with duly verified proof thereof, the term of the foregoing lease with all its terms and conditions and all the rights and privileges thereunder, save as hereinafter modified is hereby extended for the period of two (2) years from the first day of October, 1911, expiring at noon on the first day of October, 1913, unless sooner forfeited or determined through the violation of any covenant in said lease against the said lessee, M. D. McCumber, reserved.

IT IS HEREBY AGREED, that the said Menzo D. McCumber, lessee in said lease may, if he so desires, cease operations on said mining claim from this first day of May, 1909, until the fifteenth day of November, 1909, on which latter date he shall resume operations on the mining ground and premises mentioned in the foregoing lease, to wit, the "MOONLIGHT" or "GRANT" mining claim, and continue operations thereon according to the terms and conditions of the said lease.

IN WITNESS WHEREOF, the parties hereto, lessor and lessee, have hereunto set their hands and

seals, this first day of May, 1909.

PACIFIC COAL & TRANSPORTATION
COMPANY, a Corporation, [Seal]

By (Signed) "JOHN T. REED,"

Its Agent in Alaska,

(Signed) "MENZO D. McCUMBER." [Seal]

Signed, sealed and delivered in presence of:

(Signed) "JOHN F. SMITH."

(Signed) "F. J. KOLASH." [63]

Exhibit "C" [to Answer of Defendant M. D. McCumber].

MEMORANDUM OF AGREEMENT.

MEMORANDUM OF AGREEMENT, made and entered into this 28th day of April, 1911, by and between the PACIFIC COAL & TRANSPORTATION COMPANY, a corporation, party of the first part, and MENZO D. McCUMBER, party of the second part, WITNESSETH:

WHEREAS, the party of the first part did on August 15th, 1908, make, execute and deliver unto the party of the second part a certain indenture of lease demising, leasing and letting to said second party all of that certain placer mining claim known as and called BENCH CLAIM No. 1, at the western base of Anvil Mountain, also known as and called MOONLIGHT or GRANT Claim, containing about twenty (20) acres, being the same claim located by W. N. Grant on January 9th, 1899, the certificate of location of said claim being of record in book 3, page 59, and the amended certificate of record in volume 95, page 223, of the Cape Nome Mining & Recording District, District of Alaska, in which said precinct said claim is situated; and

WHEREAS, said party of the first part did extend thereafter, on the first day of May, 1909, by written instrument between the party of the first part and party of the second part, the term of said lease for a period of two (2) years, ending and expiring at noon on the first day of October, 1913; under the terms and conditions of said written lease and said written extension; and

WHEREAS, since said last mentioned date a certain suit has been commenced and is now pending in the District Court for the District of Alaska, Second Division, by the Pioneer Mining Company, a corporation, against both of the [64] parties to this agreement, claiming in said action the ownership of most of the valuable portion of said placer claim above described; and

WHEREAS, said second party hereto represents that he is in possession of and has under his control certain evidence necessary and valuable to the successful defense of the said litigation for the purpose of establishing title to the whole of said claim in the party of the first part hereto; and

WHEREAS, it is the desire and intention of the parties hereto to modify the terms of said written lease and said written extension thereof above mentioned;

NOW, THEREFORE, for and in consideration of the mutual promises herein expressed and other considerations, it is agreed between the parties hereto as follows:

First: That said party of the second part shall secure the services of at least two (2) attorneys to

assist in the preparation for and trial of said case above mentioned, or any other litigation that may arise involving the title to said claim during the lifetime of said lease, at his own expense and cost.

Second: That the party of the second part shall at his own expense and cost seek out and produce at the trial of said cause such testimony, by deposition, documentary evidence or otherwise, as may be within his knowledge or control, or that may hereafter come within his knowledge or control.

Third: That party of the first part agrees that said written lease and written extension thereof above mentioned [65] shall be modified so that the same shall be and remain in full force and effect for a period of three (3) years after the termination of the aforesaid litigation, or after the final termination of the settlement of the title between said Pioneer Mining Company and party of the first part, and free of all litigation that may hereafter arise.

Fourth: That said party of the first part shall and will accept from said lessee, party of the second part, fifteen per cent. (15%) of the gross amount of all gold and gold dust taken and extracted from said claim as royalty from the first forty thousand dollars (\$40,000.00) of gold or gold dust extracted therefrom, and thereafter twenty-five per cent. (25%) of the gross amount of all gold and gold dust taken or extracted from said claim during the lifetime of the lease.

Fifth: That in view of the fact that a vigorous prosecution of mining and mining development on said placer claim at the present time would entail a

large expenditure of money by the lessee and while hampered by litigation and without benefit to the party of the first part, it is hereby agreed that the covenant in said written lease requiring said second party "to work and mine said premises as aforesaid, as steadily and continuously from the date of this lease as weather and the season of the year will permit" is hereby waived by the party of the first part until the termination of the litigation between said Pioneer Mining Company and the party of the first part, and until the said title of the party of the first part to said placer claim is fully settled. That at any time between October 15th and June 1st of each year immediately thereupon said second party shall commence mining operations upon said placer claim and prosecute the same vigorously and in the manner [66] provided in said lease.

Sixth: That in all other respects said lease shall be and remain operative between the parties hereto.

Seventh: This agreement shall be binding upon the heirs, executors, administrators and assigns of the parties hereto.

IN WITNESS WHEREOF the parties have hereunto set their hands and seals the day and year first above written.

(Signed) PACIFIC COAL & TRANSPORTATION CO. [Seal]

By (Signed) J. ALLISON BRUNER,
Its Attorney in Fact.

(Signed) MENZO D. McCUMBER. [Seal]

Signed, sealed and delivered in presence of:

(Signed) ELWOOD BRUNER.

(Signed) WILLIAM A. GILMORE.

United States of America,
District of Alaska,—ss.

THIS IS TO CERTIFY that on this 28th day of April, 1911, personally appeared before me the undersigned notary public in and for the District of Alaska, Menzo D. McCumber, personally known to me to be the person named and described in the foregoing instrument, who executed the same and acknowledged to me that he executed the same for the uses and purposes therein mentioned;

Also at the same time and place appeared J. ALLISON BRUNER, known to me to be the attorney in fact of the Pacific Coal & Transportation Company, a corporation, who executed the foregoing instrument by signing the name of the said Pacific Coal & Transportation Company, a corporation, as principal and his own name thereto as attorney in fact and acknowledged to me that he executed the same as such for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal, the day and year first above written.

[Notarial Seal]

(Signed) WILLIAM A. GILMORE,
Notary Public in and for the District of Alaska, Residing at Nome. [67]

Rec'd copy of this amended answer this 4th day of Nov., 1911.

O. D. COCHRAN,
Of Attys. for Plf.

[Endorsed]: Original. No. 2245. In the District Court for the District of Alaska, Second Division. Pioneer Mining Company, Plaintiff, vs. The Pacific Coal & Transportation Company, M. D. McCumber, Defendant. Amended Answer of M. D. McCumber. Filed in the office of the Clerk of the District Court of Alaska, Second Division, at Nome. Nov. 6, 1911. John Sundback, Clerk. By J. Allison Bruner, Deputy. William A. Gilmore, Attorney at Law, Nome, Alaska, Attorney for M. D. McCumber. [68]

*In the District Court for the District of Alaska,
Second Division.*

No. 2245.

PIONEER MINING COMPANY, a Corporation,
Plaintiff,

vs.

PACIFIC COAL & TRANSPORTATION COM-
PANY, a Corporation, M. D. McCUMBER,
JOHN DOE and RICHARD ROE,
Defendants.

**Reply [to Amended Answer of Pacific Coal and
Transportation Company].**

Now comes the plaintiff above named, and replying to the amended answer of the defendant Pacific Coal and Transportation Company, admits, denies and alleges as follows:

I.

Except as hereinafter admitted or qualified, the plaintiff denies each and every allegation, matter and thing contained in the defendant's first, further,

separate and affirmative answer, and plaintiff especially denies that the premises described in said answer were, on the 9th day of January, 1899, vacant, unappropriated and unoccupied mineral lands belonging to the Government of the United States, and alleges that, on the contrary, the premises described in the complaint were, on the 3d day of January, 1899, appropriated and located as a placer mining claim by one Andrew Jensen the predecessor in interest of said plaintiff, under the mineral land laws of the United States, who then and there performed each and every act required by law to perfect said location, and that thereafter the plaintiff, by mesne conveyances, [69] became the owner of said premises and the successor in interest of said locator, Andrew Jensen; and plaintiff admits that the premises described in its complaint and called Bench No. 1 Moonlight Creek, covers and embraces a portion of the westerly end of the alleged Grant Claim as described in its answer.

II.

The plaintiff denies each and every allegation, matter and thing contained in the defendants' second, further separate and affirmative defense.

III.

The plaintiff denies each and every allegation, matter and thing contained in the defendant's third, further, separate and affirmative defense, except that plaintiff admits that the premises described in its complaint and called Bench No. 1 Moonlight Creek covers and embraces a portion of the westerly end of

the alleged Grant claim as described in defendant's answer.

IV.

The plaintiff denies each and every allegation, matter and thing contained in the defendant's fourth, further, separate and affirmative defense, except the plaintiff admits that it asserts ownership, title and possession to a large portion of the westerly part of the premises described in said answer as the Grant placer claim.

V.

The plaintiff denies each and every allegation, matter and thing contained in the defendant's fifth, further, separate and affirmative answer.

VI.

The plaintiff denies each and every allegation, matter and thing contained in the defendant's sixth, further, [70] separate and affirmative answer and defense.

And replying further to said answer and defense, plaintiff alleges:

FIRST: That the defendant Pacific Coal & Transportation Company is a foreign corporation organized under the laws of the State of Maine, and has not, since the year 1907, filed any annual statement with the clerk of the District Court for the District of Alaska, Second Division, and had not, prior to February 8th, 1904, filed with said clerk of said Court an authenticated or other copy of its Charter or Articles of Incorporation, or any statement, as required by Chapter 23, Part 5, of the Civil Code of the District of Alaska; and had not, prior to said last

named date, designated an agent within the District of Alaska or at all, upon whom service of process might be had, as required by said Chapter of the Code of the District of Alaska.

SECOND: That the said defendant Pacific Coal & Transportation Company, have not, since the year 1909, and for more than one year prior to the commencement of this action, had a designated agent resident within the District of Alaska upon whom service of process might be had, as provided for in Chapter 23 part 5 of the Code of the District of Alaska, and have not, during said last named period, had any agent or officer or representative resident within the District of Alaska, or within the District of Alaska, upon whom service of process might be had.

THIRD: That the defendant, Pacific Coal & Transportation Company, claims title to the alleged Grant Placer Mining Claim, from the Corwin Trading Company, a foreign [71] corporation organized under the laws of the State of New Hampshire.

FOURTH: That said Corwin Trading Company has never at any time filed an authenticated copy, or any copy of its Articles of Incorporation or Charter, or any statement or designation of any resident agent, with the clerk of the District Court, Second Division of the District of Alaska, as required by Chapter 23, Part 5, of the Code of the District of Alaska, and has never had any officer or agent upon whom service of process is authorized or might be made, resident within the District of Alaska.

VII.

Further replying to the defendant's seventh, further, separate and affirmative defense and answer, plaintiff denies, admits and alleges as follows:

FIRST: The plaintiff denies each and every allegation, matter and thing in said answer and defense contained, except as hereinafter admitted, qualified or otherwise alleged.

SECOND: The plaintiff admits that the Pioneer Mining Company was organized in 1901; admits that Jafet Lindeberg, John Brynstoneson and E. O. Lindbloom were among the organizers and principal stockholders of said plaintiff Pioneer Mining Company, and that for a long time prior to the organization of said Company they had been mining copartners and were the owners of the lands and premises acquired by the plaintiff at the time of its organization; and the plaintiff further admits that Jafet Lindeberg, since the organization of the plaintiff corporation, has been its president and general manager. [72]

THIRD: That as to the several matters and things contained in the fourth paragraph of said seventh defense and answer, the plaintiff alleges that it has not sufficient knowledge or information to form a belief, and it therefore denies each and every allegation in said paragraph contained.

FOURTH: That as to the several matters and things contained in the fifth, sixth and seventh paragraphs of said seventh defense and answer, the plaintiff denies each and every allegation, matter and thing therein contained, except that plaintiff admits that the actions therein mentioned, were commenced

as therein alleged, and that the legal proceedings had in said actions were had as therein alleged; and the plaintiff further admits that in the year 1906 the Moonlight Water Company was organized.

WHEREFORE plaintiff prays as in the complaint herein.

_____,
_____,
Attorneys for Plaintiff.

United States of America,
District of Alaska,—ss.

L. Stevenson, being first duly sworn, deposes and says:

That he is the manager of the plaintiff, Pioneer Mining Company, a corporation; that he has read the foregoing reply and knows the contents thereof, and that the same is true as he verily believes.

L. STEVENSON.

Subscribed and sworn to before me this the 11th day of November, 1911.

[Notarial Seal] O. D. COCHRAN,
Notary Public in and for the District of Alaska.

[73]

Service of a copy of the foregoing Reply this 11th day of Nov., 1911, at 4 P. M., admitted.

ELWOOD BRUNER,
Attorney for Pacific Coal & T. Co.

[Endorsed]: No. 2245. In the District Court for the District of Alaska, Second Division. Pioneer Mining Company, Plaintiff, vs. Pacific Coal & Transportation Company et al., Defendants. Reply to an

Answer P. C. & T. Co. Filed in the office of the Clerk of the District Court of Alaska, Second Division, at Nome. Nov. 11, 1911. John Sundback, Clerk. By _____, Deputy. O. D. Cochran and G. J. Lomen, Attorney for Plaintiff. [74]

In the District Court for the District of Alaska, Second Division.

No. 2,245.

PIONEER MINING COMPANY, a Corporation,
Plaintiff,

vs.

PACIFIC COAL & TRANSPORTATION COMPANY, a Corporation, M. D. McCUMBER,
JOHN DOE and RICHARD ROE,
Defendants.

Reply [to Amended Answer of M. D. McCumber].

Now comes the plaintiff above named, and replying to the amended answer of the defendant, M. D. McCumber, admits, denies and alleges as follows:

I.

Except as hereinafter admitted or qualified, the plaintiff denies each and every allegation, matter and thing contained in the defendant's first, further, separate and affirmative answer, and plaintiff especially denies that the premises described in said answer were, on the 9th day of January, 1899, vacant, unappropriated and unoccupied mineral lands belonging to the Government of the United States, and alleges that, on the contrary, the premises described in the complaint were, on the 3d day of January, 1899,

appropriated and located as a placer mining claim by one Andrew Jensen, the predecessor in interest of said plaintiff, under the mineral land laws of the United States, who then and there performed each and every act required by law to perfect said location, and that thereafter the plaintiff, by mesne conveyances, [75] became the owner of said premises and the successor in interest of said locator, Andrew Jensen; and plaintiff admits that the premises described in its complaint and called Bench No. 1 Moonlight Creek, covers and embraces a portion of the westerly end of the alleged Grant Claim as described in defendant's answer.

II.

The plaintiff denies each and every allegation, matter and thing contained in the defendant's second, further, separate and affirmative defense.

III.

The plaintiff denies each and every allegation, matter and thing contained in the defendant's third, further, separate and affirmative defense, except that plaintiff admits that the premises described in its complaint and called Bench No. 1 Moonlight Creek, covers and embraces a portion of the westerly end of the alleged Grant claim as described in defendant's answer.

IV.

The plaintiff denies each and every allegation, matter and thing contained in the defendant's fourth, further, separate and affirmative defense, except the plaintiff admits that it asserts ownership, title and possession to a large portion of the westerly part of

the premises described in said answer as the Grant placer claim.

V.

The plaintiff denies each and every allegation, matter and thing contained in the defendant's fifth, further, [76] separate and affirmative answer.

VI.

The plaintiff denies each and every allegation, matter and thing contained in the defendant's sixth, further, separate and affirmative answer and defense.

And replying further to said answer and defense, plaintiff alleges:

FIRST: That the defendant Pacific Coal & Transportation Company is a foreign corporation organized under the laws of the State of Maine, and has not, since the year 1907, filed any annual statement with the clerk of the District Court for the District of Alaska, Second Division, and had not, prior to February 8th, 1904, filed with said clerk of said court any authenticated or other copy of its charter or Articles of Incorporation, or any statement, as required by Chapter 23, Part 5 of the Civil Code of the District of Alaska; and had not, prior to said last named date, designated an agent within the District of Alaska or at all, upon whom service of process might be had, as required by said Chapter of the Code of the District of Alaska.

SECOND: That the said defendant Pacific Coal & Transportation Company, have not, since the year 1909, and for more than one year prior to the commencement of this action had a designated agent resident within the District of Alaska upon whom service

of process might be had, as provided for in Chapter 23, Part 5 of the Code of the District of Alaska, and have not, during said last named period, had any agent or officer or representative resident within the District of Alaska, or within the District of Alaska, upon whom service of process might be had. [77]

THIRD: That the defendant, Pacific Coal & Transportation Company, claims title to the alleged Grant Placer Mining Claim, from the Corwin Trading Company, a foreign corporation organized under the laws of the State of New Hampshire.

FOURTH: That said Corwin Trading Company has never at any time, filed an authenticated copy, or any copy of its Articles of Incorporation or Charter, or any statement or designation of any resident agent, with the Clerk of the District Court, Second Division of the District of Alaska, as required by Chapter 23, Part 5 of the Code of the District of Alaska, and has never had any officer or agent upon whom service of process is authorized or might be made, resident within the District of Alaska.

VII.

Further replying to the defendant's seventh, further separate and affirmative defense and answer, plaintiff denies, admits and alleges as follows:

FIRST: The plaintiff denies each and every allegation, matter and thing in said answer and defense contained, except as hereinafter admitted, qualified or otherwise alleged.

SECOND: The plaintiff admits that the Pioneer Mining Company was organized in 1901; admits that Jafet Lindeberg, John Bryntsen and E. O. Lind-

bloom were among the organizers and principal stockholders of said plaintiff Pioneer Mining Company, and that for a long time prior to the organization of said company, they had been mining copartners and were the owners of the lands and premises acquired by the plaintiff at the time of its organization; and the plaintiff further admits that Jafet Lindeberg, since the [78] organization of the plaintiff corporation, has been its president and general manager.

THIRD: That as to the several matters and things contained in the fourth paragraph of said seventh defense and answer, the plaintiff alleges that it has not sufficient knowledge or information to form a belief, and it therefore denies each and every allegation in said paragraph contained.

FOURTH: That as to the several matters and things contained in the fifth, sixth and seventh paragraphs of said seventh defense and answer, the plaintiff denies each and every allegation, matter and thing therein contained, except that plaintiff admits that the actions therein mentioned, were commenced as therein alleged, and that the legal proceedings had in said actions were had as therein alleged; and the plaintiff further admits that in the year 1906 the Moonlight Water Company was organized.

WHEREFORE plaintiff prays as in the complaint herein.

_____,
_____,
Attorneys for Plaintiff. [79]

United States of America,
District of Alaska,—ss.

L. Stevenson, being first duly sworn, deposes and says:

That he is the Manager of the plaintiff, Pioneer Mining Company, a corporation; that he has read the foregoing reply and knows the contents thereof and that the same is true as he verily believes.

L. STEVENSON.

Subscribed and sworn to before me this the 11th day of November, 1911.

[Notarial Seal] O. D. COCHRAN,
Notary Public in and for the District of Alaska.

Service of a copy of the foregoing Reply this 11 day of Nov., 1911, at — M., admitted.

WILLIAM A. GILMORE,
Of Attorney for Def. M. D. McCumber.

[Endorsed]: No. 2,245. In the District Court for the District of Alaska, Second Division. Pioneer Mining Company, Plaintiff, vs. Pacific Coal & Transportation Company et al., Defendants. Reply to Am. Answer M. D. McCumber. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Nov. 11, 1911. John Sundback, Clerk. By ———, Deputy. O. D. Cochran and G. J. Lomen, Attorneys for Plaintiff. [80]

In the District Court for the District of Alaska, Second Division.

THE PIONEER MINING COMPANY, a Corporation,
tion,

Plaintiff,

vs.

THE PACIFIC COAL AND TRANSPORTATION COMPANY, a Corporation, and M. D. McCUMBER,

Defendants.

Opinion.

O. D. COCHRAN, G. J. LOMEN and GEO. D. SCHOFIELD, Attorneys for Plaintiff.

ELWOOD BRUNER, Attorney for Defendant Pacific Coal and Transportation Company.

WILLIAM A. GILMORE and GEORGE B. GRIGSBY, Attorneys for Defendant M. D. McCumber.

Plaintiff brings this action under section 475 of the Alaska Code setting up title by virtue of a placer mining location made on the third day of January, 1899, in the Cape Nome Recording District, District of Alaska, and known as Bench No. 1 Moonlight Creek, near Moonlight Springs, and giving a surveyed description by metes and bounds, courses and distances, and claiming to be in the possession of said mining claim and that defendants, and each of them, claim an estate and interest in said premises adverse to plaintiff, the extent and nature of which adverse claims are to plaintiff unknown, and that said adverse claims are without right; that the value of the

property is ten thousand dollars, and prays judgment that the defendants be decreed to have no estate or interest whatever in said premises, or any part thereof, and that the title of plaintiff be decreed good and valid and that the defendants be [81] forever enjoined and restrained from asserting any claim whatsoever in and to said placer claim adverse to plaintiff, and for general equitable relief.

To this complaint the defendant Pacific Coal and Transportation Company and the defendant M. D. McCumber have answered separately, their answers being identical except that the defendant McCumber is alleged to be the lessee of the defendant Pacific Coal and Transportation Company. Both answers deny all the material allegations of the complaint and especially deny the possession of the plaintiff. Then follow seven separate and affirmative defenses.

The first affirmative defense alleges, among other things, that the defendant Pacific Coal and Transportation Company is the owner of the Moonlight or Grant claim alleged to have been located on the 9th day of January, 1899, describing it by metes and bounds according to survey; sets up the tenancy of McCumber under a lease dated this fifth day of August, 1908; also alleges that the placer mining claim described in paragraph 4 of plaintiff's complaint as No. 1 Bench Moonlight Creek, near Moonlight Springs, covers and embraces an overlap of a large portion of the westerly end of the Grant claim as described by defendants, and alleges that the exact boundaries and limitations claimed by the said plaintiff are unknown to the said answering defendants

and that the said plaintiff has no right, title, interest or estate in and to the said part or portion so claimed by the said defendants under said Grant claim, but wrongfully, unlawfully and without right assert title and ownership thereto, and the said defendants then again allege that they are in possession of said overlap and said Grant claim.

In the second affirmative defense defendants allege ownership of the said Grant claim and that their grantors and predecessors in interest have been in the uninterrupted, notorious and exclusive possession of the whole of said Grant claim under color and claim of title by reason of said Grant location ever since the ninth day of January, 1899. [82]

The third affirmative defense in substance is that the defendants were in the exclusive possession of the whole of the Grant claim including the ground in controversy on the date when plaintiff commenced this cause of action, to wit, the seventh day of November, 1910.

The fourth affirmative defense alleges ownership in the defendants by reason of the Grant location made on the ninth day of January, 1899, describing the premises by metes and bounds; the transfer by mesne conveyances to the defendant Pacific Coal and Transportation Company; that plaintiff asserts ownership, title and possession to a large portion of the westerly part of the Grant claim as described in paragraph 4 of plaintiff's complaint; that plaintiff ought not to be permitted to allege and assert that it is the owner and entitled to the possession of said part of said Grant claim, or any part thereof "because

that ever since the ninth day of January, 1899, this answering defendant, the Pacific Coal and Transportation Company, its predecessors and grantors, were the owners of the said Grant claim as above described by metes and bounds and in the exclusive possession thereof, and entitled to such exclusive possession, and because that ever since said 9th day of January, 1899, the defendant, the Pacific Coal and Transportation Company, its grantors and predecessors in interest, were, have been and now are, in the uninterrupted, open, adverse and notorious possession of the whole of said Grant placer claim and the conflict area thereof, and have been engaged for more than seven (7) years last past in operating, mining and developing the said premises and particularly the part in controversy in this action, with full knowledge and notice on the part of said plaintiff, and without any objection, interruption or complaint on its behalf; that the defendant, Pacific Coal and Transportation Company, and its lessees have expended large sums of money in mining, prospecting and developing the said area in conflict of said Grant claim, without objection or complaint of, from or on behalf of said plaintiff, [83] and with its full knowledge, ever since the location thereof, on January 9th, 1899."

The fifth affirmative defense alleges that at all times mentioned in plaintiff's complaint the defendant Pacific Coal and Transportation Company, its grantors and predecessors in interest, were in the actual, open, exclusive, notorious and uninterrupted possession of the premises in dispute.

The sixth affirmative defense alleges that plain-

tiff's cause of action was barred by the provisions of Sections 3 and 4 of Chapter 2, Part V, of the Civil Code of Alaska, and by virtue of Section 361, Chapter 38, Part IV, of the Civil Code of Alaska.

The seventh affirmative defense recites the history of certain litigation conducted in the District Court for this Division between the Moonlight Springs Water Company, plaintiff, vs. George Doverspike et al., defendants, whereby the Moonlight Springs Water Company sought to enjoin Doverspike et al., from polluting the waters of Moonlight Springs, and alleges that by reason of the matters and things alleged in said affirmative defense the plaintiff is estopped from asserting title to the premises in controversy.

The said defendants then pray judgment as follows:

“1. That the said complaint of plaintiff be dismissed.

2. That it be adjudged and decreed that the defendant, Pacific Coal and Transportation Company, is the owner in fee of the whole of said Grant claim, as above described.

3. That it be adjudged and decreed that the title to the ground in controversy be quieted and confirmed in this answering defendant, subject to the leasehold estate of the defendant, M. D. McCumber.

4. That it be decreed and adjudged that the plaintiff has no claim, estate, interest or demand in or to any part or portion of the said “Grant” claim as above described.

5. That it be adjudged and decreed that the plain-

tiff be forever barred and enjoined from asserting any claim, right, [84] title, interest or estate in or to any part or portion of the said "Grant" claim as above described.

6. That this answering defendant do have and recover its costs and disbursements in this action.

7. For such other and further relief as may seem meet and proper to the Court."

To the amended answers plaintiff filed separate replies denying all the allegations of the first affirmative defense except that the premises described in its complaint and called Bench No. 1 Moonlight Creek covers and embraces a portion of the westerly end of the alleged Grant claim as described in defendants' answers, and denies all of the material allegations of the several affirmative defenses except that it admits certain affirmative allegations contained in the seventh affirmative defense, and prays as in the complaint.

It will be seen from the statement of the pleadings that Bench No. 1 on Moonlight Creek, the location under which plaintiff claims, was made on the third day of January, 1899, and that the Grant location, under which defendants claim, was made on the ninth day of January, 1899; that plaintiff's location is prior in point of time appears from the pleadings and was not controverted during the trial. Plaintiff's location being prior in point of time, if when made included the ground in controversy, the defendants' location in so far as it conflicted would be absolutely void. The testimony shows that when the Grant location was made but one stake was

erected, and neither the exact date when the other stakes were placed upon the ground marking the boundaries nor the person by whom they were erected appears in the record. Three of the stakes, namely, the southeast, southwest, and northwest corners, of Bench No. 1 Moonlight Creek, plaintiff's claim, were established in their present position as the place where they originally stood on January 3, 1899, by testimony clear and convincing even beyond a [85] reasonable doubt. Near the southeast corner stake is a small prospect hole dug by Mrs. Jorgenson in 1899 which was identified by several witnesses who were in a position to know and whose testimony has not been contradicted in any particular. In fact, there is no testimony in the record which directly or indirectly places the position of the three stakes mentioned at any time in any other place than that they now occupy. The original position of the northeast corner stake was not so definitely located but any variance of a few feet that might occur with reference to that corner could not materially affect the rights of the defendants. A discovery having been proven, the boundaries marked so that they can be readily traced, and a location notice placed on record, the conclusion cannot be avoided that No. 1 Bench was a valid location on the 3d day of January, 1899, and that the ground embraced within its boundaries was then segregated from the public domain. That being true, if defendants recover in this action it must be by reason of some of the defenses other than their first affirmative defense.

We will first consider the fourth affirmative de-

fense together with the seventh affirmative defense, both being pleaded by way of estoppel. In order to constitute an estoppel there must exist a false representation or concealment of material facts. It must have been made with knowledge, actual or constructive, of the facts. The party to whom it was made must have been without knowledge or the means of knowledge of the real facts. It must have been made with intention that it should be acted upon and the party to whom it was made must have relied upon or acted upon it to his prejudice. The party relying upon an estoppel must not only have acted in reliance upon the conduct or representations of the parties sought to be estopped but must be destitute of knowledge of the real facts himself and have been without convenient or ready means of acquiring such knowledge. Where the truth is known to both parties or where both have equal means of knowledge there can [86] be no estoppel. All the testimony introduced by defendants under these defenses was received over the objection of plaintiff that an estoppel had not been properly or sufficiently plead, the Court reserving a ruling on the sufficiency of the pleadings until final judgment, and it is the opinion of the Court that in neither instance have the essential elements of an estoppel been plead. However that may be, and considering the pleadings as sufficient, it is certain that there was no testimony to sustain a single element of an estoppel in pais or by record. There is no contention that there was a false representation made by plaintiff or a concealment of any material fact. It is admitted by the

defendant McCumber that he knew of the existence of the conflict and that the southeast corner stake of Bench No. 1 Moonlight Creek stood within a few feet of his cabin. The records were open to him. He was advised of the conflict by a surveyor and if he was ignorant of the true condition it was because he closed his eyes and refused to hear. The stakes which now stand upon the ground were placed there by a surveyor in 1902 and all that time have been so marked that any person who desired to do so could readily ascertain to what claim they belonged and by them trace the boundaries. Each successive representative of the Pacific Coal and Transportation Company appears to have been well aware of the conflict, the testimony of Mr. Bard showing that while he was acting in that capacity he was notified by representatives of plaintiff, Pioneer Mining Company, at which time he alleges he threw the representative off the premises and ordered him not to return. Under such a state of the pleadings and evidence it would be a waste of time to go extensively into the law of estoppel.

The third affirmative defense alleges that on the 7th day of November, 1910, the date upon which plaintiff instituted this suit, the defendants were in possession of the ground in controversy and that the plaintiff, Pioneer Mining Company, was not in possession of the conflict area or any part thereof, and has no right to maintain [87] this action in equity, being, as they contend, a plea to the jurisdiction of the Court to try the cause sitting as a court of equity. Before taking up the law on this phase of the case

it might be well to briefly revert to the facts. First, the undisputed facts as they appear in the evidence are that the plaintiff had for several years prior to the commencement of this action maintained upon the ground in controversy a large ditch and also a nest of penstocks, from which ditch and penstocks have been constructed at least six pipe-lines varying in size from 10 or 12 to 30 inches and extending over and across the area in conflict, said pipe-lines having been used since the year 1905 in conveying water to plaintiff's various mining operations in the immediate vicinity, a portion of the water so conveyed being applied upon the lower or westerly end of Bench Claim No. 1 during the past two or three years prior to the commencement of this action in conducting extensive mining operations upon Bench Claim No. 1; that during each year since the construction of said penstocks and pipe-lines plaintiff has expended from \$800.00 to \$1200.00 in repairs and improvements and cleaning of the pipe-lines upon the ground in controversy; that during the summer of 1910 from about the 12th of May to the 27th of October the defendants were not in the actual possession or engaged in mining upon the Grant claim nor the ground in controversy, during which time plaintiff was carrying on extensive mining operations on Bench Claim No. 1 by hydraulic process, and that on the 7th day of November, 1910, the date of commencement of this action, two employees of the plaintiff were engaged in mining upon said Bench Claim No. 1. Thus far there is no dispute. It is contended however that some days prior to the 7th day of No-

vember, 1910, the defendants resumed their actual possession and began preparations for active mining upon the ground in controversy. This contention is supported by the testimony of Adolph Meyer which is flatly contradicted by the testimony of three witnesses for plaintiff besides the expert testimony of Mr. Gibson showing climatic conditions as [88] to the fall of snow, etc., which makes it appear at least possible that Mr. Meyer was mistaken in the month. It would therefore seem that the preponderance of the evidence upon this disputed point is in favor of the plaintiff. This statement of the facts is not necessary for a decision of the point raised by this plea and is simply inserted as a guide in the preparation of findings of fact and conclusions of law in conformity with this opinion.

Under the law defendants having set up a title in themselves by virtue of a valid location of the ground in controversy, alleging their possession and praying that their title be quieted as against the plaintiff, and having introduced testimony in support of that plea and insisted upon their right to such a decree up to this present moment, even in their written briefs, have waived their plea as to the jurisdiction of this Court. They cannot be permitted to assume such inconsistent positions. They in effect contend that if the Court finds in their favor it has ample jurisdiction to do so, but if it finds against them it is without jurisdiction. Defendants' contention that they have the right to set up all the defenses which they may have and rely upon any or all of them is undoubtedly sustained by the weight of authority as

laid down in Bliss on Code Pleading cited by defendants, but that refers to defenses and not to cross-bills or counterclaims.

The Supreme Court of Oregon however has taken a different view from perhaps the majority of the Code States, holding in an unbroken line of decisions that a plea in abatement while it may be interposed in the same answer with other defenses and that it is not necessary that it be labeled a plea in abatement, yet it must be disposed of before proceeding to a trial upon the merits. We having adopted in our Code the laws of Oregon may be bound by those decisions but it is unnecessary for this Court to pass upon that particular point of procedure at this time for the reason that that is not the question involved in this case.

Judge Baker of the Circuit Court of Appeals, Seventh [89] Circuit, in the case of Sanders vs. The Village of Riverside, 118 Fed. 720, lays down the rule which must govern in this case in the following language:

“The village thus selected its own tribunal,—one competent to pass upon the conflicting claims of title,—and thereafter could not be permitted to assert that its adversary should have resorted to a court of law. And for the village it may be said that, on the coming in of the master’s report, it did not challenge the jurisdiction of the Court to decide the merits of the exceptions presented to Mr. Sanders. The Court, so far as the record discloses, of its own motion dismissed the case, the cause and the cross-cause, at this stage of the proceedings. But the present contention

of the village in support of the Court's action apparently comes to this: If the tribunal of its own selection found that the village had title to the whole, the case would be a suit in equity; but, if Mr. Sanders were found to have title to any part, the case would be an action at law. This sounds very like the urchin's proposition to match coppers on the basis of, 'Heads, I win; tails, you lose.' "

In 32 Cyc., page 1367, the author lays down the following general proposition:

"But if the defendant in the ordinary statutory action to determine adverse claims alleges title in himself and demands affirmative relief against plaintiff it is not necessary for plaintiff to prove the allegation that the land is vacant and unoccupied or that he is in possession, as the case may be"; citing *Kipp vs. Hagman*, 73 Minn. 5; *Hooper vs. Henry*, 31 Minn. 264, and other cases.

To the same effect are the following cases:

O. C. M. Co. vs. Abbott, 167 Fed. 682.

Hopwood vs. Patterson, 2 Oreg. 50.

State vs. Blize, 37 Oreg. 408.

O'Hara vs. Parker, 27 Oreg. 172. [90]

Counsel for defendants very earnestly insisted that plaintiff is guilty of such laches as should bar its recovery in this action. Laches is such negligence as results in the omission to do what one is by law required to do to save a right, and which warrants a presumption that the claimant of it has abandoned it and declines to assert it. When an assertion of the right is neglected or omitted for a period of time

more or less great and under such circumstances as to cause prejudice to an adverse party, it may operate as a bar in equity. Although a proper ingredient in the law of laches the instances seem to be rather where courts have declared that mere lapse of time might effect a positive bar, even in cases of purely equitable jurisdiction; the defense of laches is in equity only permitted to defeat an acknowledged right on the ground that it affords evidence that the right has been abandoned. Delay alone is not the sole and controlling factor that constitutes laches. If it were so some period fixed by statute would afford a safe and unvarying rule.

Hamilton vs. Dooley, 49 Pac. 769.

Cottrell vs. Watkins, 17 S. E. 328, 19 L. R. A. 754.

Ripley vs. Seligman, 50 N. W. 143.

Babb vs. Sullivan, 21 S. E. 277.

From the foregoing authorities it will be seen that one of the controlling features in laches is such conduct as would lead the Court to believe that the party against whom it is to be enforced has abandoned his right, and where a party is asserting his right and another with full knowledge of his claim deliberately or negligently trespasses upon that right, no matter how frequent the trespasses and even though considerable sums of money were expended while thus trespassing, the trespasser acting at all times not in ignorance of the true title but in opposition to it, does not so appeal to the conscience of the chancellor as to cause a court of equity to invoke the doctrine of laches. In addition to this position the authorities

seem to be quite unanimous that in this character of [90½] actions laches is never a proper defense.

Quoting from section 33, Vol. I, Book V, Pomeroy's Equity Jurisprudence:

“A party in possession of land who resorts to a court of equity to settle a question of title is not chargeable with laches no matter how long his delay. Such a party is at liberty to wait until his title is attacked before he is obliged to act. The most frequent illustrations of this principle are found in suits by parties in possession to remove a cloud on title or to quiet title. Where, however, statutes permit such suits by parties out of possession, the doctrine of laches does apply if the plaintiff is not in possession”; citing in support of the text:

Simmons Creek Coal Co. vs. Doran, 142 U. S. 417.

Thompson vs. Dumas, 85 Fed. 517 (29 C. C. A. 312).

Messenburg vs. Denison, 18 C. C. A. 280.

Gunnison Gas & Water Co. vs. Whitaker, 91 Fed. 191.

Shaw vs. Allen, 184 Ill. 77.

Gordon vs. Johnson, 186 Ill. 18.

Hayes vs. Carroll, 74 Minn. 134.

Cook vs. Lasher, 19 C. C. A. 654.

Hensel vs. Kegans, 28 S. W. 705.

Jackson vs. Boyd, 87 S. W. 121.

Weir vs. Cordy-Fisher Lumber Co., 85 S. W. 341.

Walgren vs. Harvey, 54 W. Va. 608.

The next question demanding the consideration of the Court is the plea of the statute of limitations interposed by defendants. This question has been definitely settled in the case of Tyee Mining Co. vs. Langstedt, 136 Fed. 124, and Tyee Mining Co. vs. Jennings, 137 Fed. 864. These decisions are binding upon this Court and the mere citation of them is all that is necessary to dispose of this question, and if it were not for the very earnest and able contention of counsel for defendants this Court would not [91] consider the subject further. In view of the fact that in the Tyee case the Circuit Court of Appeals referred to the Oregon cases of Altschul vs. O'Neill, Altschul vs. Clark, and other Oregon decisions which had been rendered prior to the adoption of our Code, and by our having adopted the Oregon laws presumably adopted the Oregon decisions, counsel for defendants contend that the Circuit Court of Appeals gave controlling weight to the Oregon decisions in the Tyee case. Since the rendition of the opinion in the Tyee case the case of Boe vs. Arnold, reported in 102 Pac. 290, recedes from and overrules the Altschul vs. O'Neill and other Oregon cases, and it is for the purpose of examining to what extent the case of Boe vs. Arnold affects the question that the Court deems it advisable to review some of the authorities.

Defendants' contention that the case of Boe vs. Arnold, *supra*, is in direct opposition to the case of Tyee vs. Langstedt, *supra*, is not borne out by a careful study of the cases. In Boe vs. Arnold the

Supreme Court of Oregon uses the following language:

“The latest decisions of the Supreme Court of the United States rendered in cases having many features similar to the case at bar ought of themselves in our judgment to justify this Court in overruling and receding from the doctrine enunciated in *Altschul vs. O’Neill*, *Altschul vs. Clark and Beale vs. Hite*, so far as they conflict with the views herein announced. *Missouri Land Co. vs. Weise*, 208 U. S. 234; *Missouri Land Co. vs. Wrich*, 208 U. S. 250; *Iowa R. R. Co. vs. Blumer*, 206 U. S. 482.”

A careful consideration of the case of *Boe vs. Arnold* will show that the Court decided the case first upon the question of estoppel and simply receded from the erroneous position taken by that Court in prior decisions where it held that until patent had issued there could be no adverse possession even under a grant *in praesenti*, so long as the party in possession recognized the title in the United States. The United States cases cited and relied [92] upon in this decision very clearly show that the case of *Boe vs. Arnold* does not conflict in any way with the *Tyee* case.

We quote from the *Missouri Land Co. vs. Wiese*, 208 U. S. 294:

“Plaintiff in error set up and claimed by its answer and cross-bill that the title to its interest remained in the United States until the issuance of patent in 1893. In other words, that the grant from the Sioux City branch was not a

grant of the legal title *in praesenti*. * * *

The case was submitted to the Court on the pleadings and evidence and a decree was entered adjudging that Wiese had a perfect title to the tract. The Supreme Court of Nebraska affirmed the decree (108 N. W. 175) holding in substance that the grant to the two companies of the tract in controversy was *in praesenti*; that the title of the companies attached upon the definite location of their lines of road, and that the adverse possession of Wiese and his grantor commencing in 1882 had completely barred any claim of the companies to the property. * * *

That the decision of the Court below was right, as applied to the land within the place limits of the main line grant made to the Union Pacific Railroad Company by the Act of 1862 and the Amendatory Act of 1864, is not an open question. This is so since it has been expressly held that the main line grant was one *in praesenti*. * * *

But when the grant is not *in praesenti*, and nothing remains to be done for the administration of the grant in the Land Department and the conditions of the grant had been complied with and the grant fully earned, as in this case, notwithstanding want of final certificate and the issuance of patent, the railroad company had such title as would enable it to maintain ejectment against one wrongfully on the lands, and title by prescription would run against it in favor of one in adverse possession under color of title."

The authorities of counsel for defendants were directed largely to the combating of an erroneous position taken by counsel [93] for plaintiff following the early decisions of Oregon, and in their argument lost sight of the fact that it was not so much a question as to whether or not the party in adverse possession was holding as against the world including the United States Government, as it is a question whether or not the title actually remained in the Government during the period of adverse possession. The mere ministerial act of issuing patent is not controlling, it being simply written evidence of title.

The case of *Redfield vs. Parks*, 132 U. S. 244, very clearly states the reason for the rule adopted and consistently followed for a great number of years down to the present time by the Supreme Court of the United States:

“That the possession of the defendants does not bar the plaintiff’s action is a point too clear to admit of much controversy. It is a well-settled principle that the statute of limitations does not run against a State. If a contrary rule were sanctioned, it would only be necessary for intruders upon the public lands to maintain their possessions, until the statute of limitations shall run; and then they would become invested with the title against the Government, and all persons claiming under it. In this way the public domain would soon be appropriated by adventurers. Indeed, it would be utterly impracticable, by the use of any power within the reach of the

Government, to prevent this result. It is only necessary, therefore, to state the case in order to show the wisdom and propriety of the rule that the statute never operates against the Government. The title under which the plaintiff in ejectment claimed emanated from the Government in 1824. Until this time there was no title adverse to the claim of the defendants; there can, therefore, be no bar to the plaintiff's action."

Take the case at bar, plaintiff's location being a prior and valid location, defendants' location in conflict was void as to the conflict area and of no force or effect. Had plaintiff continued to do the annual assessment work upon this property [94] outside of the conflict area for a period of eight or nine years, and during all that period the defendants had remained in the actual, open, notorious, adverse possession of the tract in conflict, but before the statutory period had expired plaintiffs forfeited their location by failing to do the annual assessment work, it is very clear that the area in conflict would revert to the public domain, and that the first person connecting himself with the Government title by taking the necessary steps to make a valid location would be entitled to the grant from the Government, and defendants could not set up their adverse possession as against such a subsequent locator. There is not much merit in counsel's contention that we are bound by the decision of the Oregon court in *Boe vs. Arnold* for the simple reason that that decision was rendered subsequent to the

adoption of the laws in the Alaska Code. While we may have adopted the former decisions we are no more bound by subsequent decisions than we are of any other State. It would be very presumptuous on the part of this court in any event to follow the decision of the Supreme Court of the State of Oregon as against the decisions of the Circuit Court of Appeals in the Tyee cases, notwithstanding counsel's prediction that the Circuit Court of Appeals will recede from its decisions in those cases and follow the Oregon case. If counsel for defendants have cited any authority from the Federal Courts holding that there could be an adverse possession where the title still remained in the Government it has escaped the notice of the court, except perhaps where all the steps necessary to be taken had been performed by the entryman and final receipt had issued and only the ministerial act of issuing patent remained. In such a case there could be no forfeiture or abandonment on the part of the entryman and no reason for following a different rule.

This disposes of all of the contentions made by counsel for defendants so far as this court is concerned, and it is the wish of the court that defendants appeal their case to the proper tribunal to correct any errors that may have occurred during the [95] trial. Let findings of fact and conclusions of law be prepared in conformity with this opinion.

CORNELIUS D. MURANE.

Nome, Alaska, February 5th, 1912.

[Endorsed]: No. 2245. In the District Court for the District of Alaska, Second Division. Pioneer

Mining Co., Plaintiff, vs. The Pacific Coal and Transportation Co. et. al., Defendants. Opinion. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Feb. 5, 1912. John Sundback, Clerk. By J. Allison Bruner, Deputy. [96]

*In the District Court for the District of Alaska,
Second Division.*

No. 2245.

PIONEER MINING COMPANY, a Corporation,
Plaintiff,

vs.

THE PACIFIC COAL & TRANSPORTATION
COMPANY, M. D. McCUMBER,
Defendants.

Defendants' Proposed Bill of Exceptions No. 1.

BE IT REMEMBERED that on the 12th day of May, 1911, the defendant M. D. McCumber, served upon the plaintiff, and filed his written motion requesting an order of the above-entitled court to assign the above-entitled action to the jury calendar; and be it further remembered that thereafter on the 15th day of May, 1911, the defendant, Pacific Coal & Transportation Company, filed its written motion also requesting the above-entitled court to assign the said action to the jury calendar, which said written motions of the said defendants were as follows:

*In the District Court for the District of Alaska,
Second Division.*

No. 2245.

PIONEER MINING COMPANY, a Corporation,
Plaintiff,

vs.

THE PACIFIC COAL & TRANSPORTATION
COMPANY, a Corporation, M. D. McCUM-
BER, JOHN DOE and RICHARD ROE,
Defendants.

**Motion [97] [to Assign Case on Jury Trial Calen-
dar, etc.].**

Comes now the defendant, M. D. McCumber, and moves the Court for an order assigning the above-entitled action on the jury trial calendar and fixing the date of trial of said action.

This motion is based upon the affidavit of the defendant, M. D. McCumber, served and filed herewith, and upon all the records and files in the above-entitled action.

Dated at Nome, Alaska, this 12th day of May, 1911.

GEORGE B. GRIGSBY,
ELWOOD BRUNER, and
WILLIAM A. GILMORE,
Attorneys for Defendant M. D. McCumber.

*In the District Court for the District of Alaska,
Second Division.*

No. 2245.

PIONEER MINING COMPANY, a Corporation,
Plaintiff,

vs.

THE PACIFIC COAL & TRANSPORTATION
COMPANY, a Corporation, M. D. McCUM-
BER, JOHN DOE and RICHARD ROE,
Defendants.

**Motion [for Order Assigning Case on Jury Calen-
dar].**

Comes now the defendant, Pacific Coal & Transportation Company, and moves the Court for an order assigning the above-entitled action on the jury calendar and fixing the date of trial of said action.

This motion is based upon all the records and files in the above-entitled action.

Dated at Nome, Alaska, this 15th day of May, 1911.

J. ALLISON BRUNER,
Attorney for Defendant Pacific Coal & Transportation Co. [98]

And be it further remembered that on the 12th day of May, 1911, the defendant, M. D. McCumber, filed his affidavit in support of the said motion, which said affidavit was in words and figures as follows:

**[Affidavit of M. D. McCumber in Support of Motion
for Order Assigning on Jury Calendar].**

*In the District Court for the District of Alaska,
Second Division.*

No. 2245.

PIONEER MINING COMPANY, a Corporation,
Plaintiff,

vs.

THE PACIFIC COAL & TRANSPORTATION
COMPANY, a Corporation, M. D. McCUM-
BER, JOHN DOE and RICHARD ROE,
Defendants.

United States of America,
District of Alaska,—ss.

M. D. McCumber, being first duly sworn, deposes
and says:

That he is one of the defendants in the above-entitled action; that the above-entitled action is now at issue between affiant and the plaintiff and is ready for trial; that affiant is in possession of the ground in controversy and is engaged in mining thereon, and is anxious to have the said case brought to trial; that the trial of said action will determine the right of possession of the ground in controversy; that affiant is anxious to have a jury trial of the above-entitled action, and to have the issues presented by the pleadings decided by a jury, and therefore prays the Court to set and assign the said cause for trial on the jury calendar and to [99] fix the date for the trial thereof at as early a date as possible.

M. D. McCUMBER.

Subscribed and sworn to before me this 12th day of May, 1911.

[Seal] WILLIAM A. GILMORE,
Notary Public in and for the District of Alaska.

And be it further remembered that thereafter the said motion came on regularly for hearing before the above-entitled court on the 20th day of May, 1911, the plaintiff appearing by its attorneys of record, and the defendants being represented by their attorneys of record, and after argument, the said motion was submitted to the Court and by the Court taken under advisement and thereafter on the 27th day of May, 1911, the Court rendered its opinion in writing denying the motions of the defendants, to which rulings of the Court the defendants then and there excepted, which said exceptions were allowed by the Court.

BE IT REMEMBERED that thereafter on the 29th day of May, 1911, the defendants filed their written notice and motion requesting the Court to enter an order directing that certain issues of fact raised by the pleadings be submitted to a jury for inquiry and determination, which said notice and motion were in words and figures as follows:

*In the District Court for the District of Alaska,
Second Division.*

No. 2245.

PIONEER MINING COMPANY, a Corporation,
Plaintiff,

vs.

THE PACIFIC COAL & TRANSPORTATION
COMPANY, a Corporation, M. D. McCUM-
BER, JOHN DOE and RICHARD ROE,
Defendants.

**Notice [100] [of Motion for Order to Submit Cer-
tain Questions to Jury, etc.].**

To the Pioneer Mining Company, a Corporation,
and to O. D. Cochran, Esq., and G. J. Lomen,
Esq., Attorneys of Said Company:

You and each of you will please take notice that the defendants, Pacific Coal & Transportation Company, a corporation, and M. D. McCumber, will on Saturday, the third day of June, A. D. 1911, at the hour of ten o'clock on said day, or as soon thereafter as counsel can be heard, call up for hearing their motion, made, served and filed herewith, in the above-entitled action, for an order of the above-entitled court submitting certain issues to the inquiry and determination of a jury, as prayed for in said motion.

Dated at Nome, Alaska, this 29th day of May, 1911.

GEO. B. GRIGSBY,
ELWOOD BRUNER, and
WILLIAM A. GILMORE,
Attorneys for M. D. McCumber.
J. ALLISON BRUNER,

Attorney for Pacific Coal & Transportation Company.

*In the District Court for the District of Alaska,
Second Division.*

No. 2245.

PIONEER MINING COMPANY, a Corporation,
Plaintiff,

vs.

THE PACIFIC COAL & TRANSPORTATION
COMPANY, a Corporation, M. D. McCUM-
BER, JOHN DOE and RICHARD ROE,
Defendants.

Motion [to Submit Certain Questions, etc., to Jury].

Come now defendants, Pacific Coal & Transportation Company, a corporation and M. D. McCumber, by and through [101] their respective attorneys and move the Court for an order directing that certain issues of fact raised by the pleadings in the above-entitled action, a copy of which said proposed issues are served and filed herewith, be submitted to a jury for inquiry and determination and that the Court by its proper order, submit the said issues to a jury for determination.

This motion is made and based under the provisions of section 371, Chapter 39, of the Alaska Civil Code.

This motion is made and based upon all of the records, files and pleadings in the above-entitled action.

Dated at Nome, Alaska, this 29th day of May, 1911.

GEO. B. GRIGSBY,
ELWOOD BRUNER, and
WILLIAM A. GILMORE,
Attorneys for M. D. McCumber.
J. ALLISON BRUNER,

Attorney for Pacific Coal & Transportation Co.

And be it further remembered that on the said 29th day of May, 1911, the defendants served upon the plaintiff, and filed a proposed statement of issues of fact to be submitted to a jury by the Court, which said statement of issues of fact were in words and figures as follows:

*In the District Court for the District of Alaska,
Second Division.*

No. 2245.

PIONEER MINING COMPANY, a Corporation,
Plaintiff,

vs.

THE PACIFIC COAL & TRANSPORTATION
COMPANY, a Corporation, M. D. McCUM-
BER, JOHN DOE and RICHARD ROE,
Defendants. [102]

**Proposed Statement of Issues of Fact to be
Submitted to a Jury by the Court.**

Defendants Pacific Coal & Transportation Company, a corporation, and M. D. McCumber, pray the Court to submit the following statement of issues of fact to a jury for determination:

1. Was a valid location of the premises in controversy made by plaintiff, or its predecessors in interest?

2. Was a valid location of the premises in controversy made by the defendants or their predecessors in interest?

3. If from the evidence you find that the plaintiff and its predecessors in interest made a valid location of the claim known as Bench Claim No. One (1) Moonlight Creek, did said placer location include within its exterior boundaries the ground in controversy in this action?

4. Were the defendants in actual possession of the ground in controversy and described by them in their answers, at the date of the commencement of this action, to wit: the seventh day of November, 1910?

5. Were the defendants and their predecessors in interest in the uninterrupted, adverse and notorious possession of the ground in controversy in this action under color and claim of title, for seven years or more immediately prior to the Seventh day of November, 1910, the date upon which this action was commenced?

Dated at Nome, Alaska, this 29th day of May, A. D. 1911.

GEO. B. GRIGSBY,

ELWOOD BRUNER, and

WILLIAM A. GILMORE,

Attorneys for Defendant M. D. McCumber.

J. ALLISON BRUNER,

Attorney for Defendant Pacific Coal & Transportation Co. [103]

And be it further remembered that thereafter on the 17th day of June, 1911, the said motion came on regularly for hearing before the above-entitled court, the plaintiff being represented by its attorneys of record and the defendants being represented by their attorneys of record, and the Court after argument upon the said motion, rendered its decision denying the said motion, to which ruling of the Court the defendants then and there excepted and the said exception was allowed by the Court.

And now in furtherance of justice and that right may be done, the defendants present the foregoing proposed bill of exceptions No. 1, and pray that the same may be settled, allowed, signed and certified by the Court, as allowed by law.

ELWOOD BRUNER,

Attorney for Defendant Pacific Coal & Transportation Company.

GEO. B. GRIGSBY, and

WILLIAM A. GILMORE,

Attorneys for Defendant M. D. McCumber.

The foregoing proposed bill of exceptions having been served, filed and presented, as required by law,

and being full, true and correct, is hereby settled and allowed.

Done in open Court this 30th day of December, 1911.

CORNELIUS D. MURANE,
District Judge.

Service of the above and foregoing proposed bill of exceptions acknowledged by receipt of a copy this 10th day of November, 1911.

O. D. COCHRAN,
Of Attorneys for Plaintiff.

[Endorsed]: No. 2245. In the District Court for the District of Alaska, Second Division. Pioneer Mining Company, a Corporation, Plaintiff, vs. Pacific Coal & Transportation Company, M. D. McCumber et al., Defendants. Defendants' Proposed Bill of Exceptions No. 1. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Nov. 10, 1911. John Sundback, Clerk. By ———, Deputy. C. William A. Gilmore, Attorney at Law, Nome, Alaska, Attorney for M. D. McCumber. Vol. 9, Orders and Judgments, p. 231. C.

Refiled in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Dec. 30, 1911. John Sundback, Clerk. By J. Allison Bruner, Deputy. [104]

*In the District Court for the District of Alaska,
Second Division.*

No. 2245.

PIONEER MINING COMPANY, a Corporation,
Plaintiff,

vs.

THE PACIFIC COAL & TRANSPORTATION
COMPANY, a Corporation, M. D. McCUM-
BER, JOHN DOE and RICHARD ROE,
Defendants.

Defendants' Proposed Bill of Exceptions No. 2.

BE IT REMEMBERED that on the 25th day of October, 1911, the defendants filed their written motion for a continuance of the trial of the above-entitled cause, basing said motion upon the records, files, depositions, and upon the further interrogatories and exhibits served and filed to be propounded to the witness Andrew Jensen, and upon the affidavit of defendant M. D. McCumber served and filed with said motion; that the said written motion and the said affidavit of the said M. D. McCumber were in words and figures as follows: [105]

*In the District Court for the District of Alaska,
Second Division.*

No. 2245.

PIONEER MINING COMPANY, a Corporation,
Plaintiff,

vs.

THE PACIFIC COAL & TRANSPORTATION
COMPANY, a Corporation, M. D. McCUM-
BER et al.,

Defendants.

Motion for a Continuance.

Come now defendants, Pacific Coal & Transportation Company, a corporation, and M. D. McCumber, and move the Court for an order continuing the trial of said action until the spring term of the equity court, upon the ground and for the reasons that the defendants are not prepared and ready to go to trial in said action at the present term, because it is necessary to retake the deposition and re-examine the witness Andrew Jensen, a resident of Buffalo, North Dakota, upon further interrogatories already filed and served in this action.

This motion is based upon the affidavit of the defendant M. D. McCumber, served and filed herewith, and upon all of the records, files and depositions in the above-entitled action, and upon the further interrogatories and exhibits served and filed, to be propounded to the said witness, Andrew Jensen.

Dated at Nome, Alaska, this 25th day of October, 1911.

ELWOOD BRUNER,
Attorney for Defendant Pacific Coal & Transportation Company.

GEO. B. GRIGSBY and
WILLIAM A. GILMORE,
Attorneys for Defendant M. D. McCumber. [106]

*In the District Court for the District of Alaska,
Second Division.*

No. 2245.

PIONEER MINING COMPANY, a Corporation,
Plaintiff,

vs.

THE PACIFIC COAL & TRANSPORTATION
COMPANY, a Corporation, M. D. McCUM-
BER et al.,

Defendants.

**Affidavit of M. D. McCumber on Motion for
Continuance.**

United States of America,
District of Alaska,—ss.

M. D. McCumber, being first duly sworn upon his oath deposes and says:

That he is one of the defendants in the above-entitled action; that said action was commenced in November, 1910, and was brought to issue about the opening of navigation, 1911; that immediately after the bringing of said action in November, 1910, by the plaintiff, affiant interviewed one Tom D. Jensen

of Nome, Alaska, with reference to the whereabouts of his father, Andrew Jensen, the alleged locator of the Moonlight Bench Placer Claim, claimed by the plaintiff in this action, and whose name was subscribed as a witness to the Grant location under which the defendants claim; that affiant ascertained that the said Andrew Jensen was living on a farm near Buffalo in the State of North Dakota, and affiant caused the said Tom D. Jensen to write to his father to ascertain the facts with reference to the said location; that the said Tom D. Jensen [107] did write a letter to his father, Andrew Jensen, with reference to the facts pertaining to the said placer claims, and thereafter on the 12th day of December, 1910, affiant caused the said Tom D. Jensen to write another letter to his father making further inquiries with reference to said placer claims, a copy of which said letter so written by said Tom D. Jensen to his father, Andrew Jensen, is hereunto attached and marked Exhibit "A" and made a part hereof; that at the time the said letter, Exhibit "A," was sent to said Andrew Jensen, affiant caused a blue-print of the survey by one Arthur Gibson, made in 1902, and very similar to the one used by the plaintiff in cross-examination of the said witness at the time his deposition was taken, to be mailed to said Andrew Jensen for his inspection.

That in the spring of 1911 the said Tom D. Jensen received a reply to each of said letters from said Andrew Jensen; that in the first reply to the first letter, the said Andrew Jensen wrote as follows:

“Enclosed find a raw draft of my Bench claim on Anvil Creek. It starts from the lower half of No. 1 Below on Anvil then butting against Lindblom’s Moonlight Claim and then following along Moonlight claim towards Anvil Mountain ending not very far from the base of the mountain. Grant’s claim starts right from where mine ends up the side of Anvil Mountain. There is a vale in Anvil Mountain and Grant’s claim runs up that vale. At the time I staked the Bench on Anvil there was a spring on my claim. My Bench on Moonlight you will see in the drawing was staked the full length towards Little Creek bounded on the end by the upper half of Lindblom’s Moonlight Claim. You can figure the directions out from the drawing. My Moonlight claim was not so very far from the base of Anvil mountain, possibly 100 feet.”

In the second letter received by Tom D. Jensen, in the month of April, the said Andrew Jensen stated with reference to the ground in controversy as follows:

“Received your letter together with map of claims. It is impossible for me to do any marking on the map because I think the claims do not seem to be in the same positions. My Bench on Anvil so far as I remember was staked along the lower half of No. 1 Below Discovery on Anvil Creek, running the whole width because after running some distance towards Moonlight Creek I struck Robert Lyng’s claim on Moonlight. Then I followed [108] up the Moonlight then

again along the upper end of Moonlight claim until I had the 1320 feet from the location stake on No. 1 Below. I don't remember how many feet the upper end of my claim was, tho I think it was several hundred.

Now, Grant's location stake was set right beside mine at the upper end of Moonlight claim, running up Anvil Mountain.

There was some flat ground between the mountain and our stakes so Grant's claim takes in some of the flat ground between the end of my claim and the base of Anvil Mountain.

My bench on Moonlight was some distance from the upper half of my Anvil Bench. How far I do not remember. My Bench on Moonlight started from the upper end of Robert Lyng's claim, taking in the willows on a kind of a high bench but not clean up to the base of the mountain. There was some space between the base of the mountain and my claim. If I remember correctly the last year I was there I think Robert Lyng's stakes had been moved some up towards Anvil Mountain from where they were originally located. I think this was done in order to take in all the springs. This is about all the information I can give you."

That accompanying the first reply the said Andrew Jensen mailed to Tom D. Jensen a map or drawing of the placer claims in the vicinity of Moonlight Springs and showing the location of the plaintiff's claim, as staked on the ground by him (Jensen), and giving its position between Bob Lyng's Moonlight

claim and Little Creek, as claimed by the defendants; the said original map drawn by said Andrew Jensen is attached to the interrogatories served and filed to be sent to the said witness for identification, and now referred to and made a part of this affidavit; that after the receipt of both of said letters and said map, from the said Andrew Jensen, the defendants, relying upon the facts stated in said letters, and the description given in said map, sued out a commission in the above-entitled cause and Court, to take the deposition of the said Andrew Jensen at Fargo, in the said State of North Dakota, and the defendants, relying on the said statements and map, propounded direct interrogatories to the said witness to prove the facts stated in said letters and map; that prior to the suing out the said commission to take said deposition, affiant, relying on the said letters and map, caused the said Tom D. Jensen to cable his father, Andrew Jensen, to come to Nome, offering to pay his expenses, as shown by the telegram [109] annexed to the further interrogatories filed herein; that in response to said telegram the said Tom D. Jensen received a telegram from Andrew Jensen as set forth in the said further interrogatories filed herein; that the said deposition of the said Andrew Jensen was taken at Fargo, N. D., on or about the 19th day of September, 1911, and a few days ago was filed and published in the above-entitled action; that the said Andrew Jensen in his said deposition contradicted all the material statements in his said letters and in said telegram, and the facts as shown by the said map or drawing made by him prior thereto, and upon

which defendants relied; that at the time affiant sued out the said commission to take said deposition of said Andrew Jensen, defendants had every reason to believe the statements made by said witness, Andrew Jensen, to be true, and that the facts set forth in said map or drawing were true, and that the said Andrew Jensen would so testify; that heretofore, during the past week, the defendants have caused to be served and filed upon the plaintiff a notice to retake the deposition of said witness, accompanied by further interrogatories to be propounded to the said witness, calling and directing his attention to the telegram sent to him by Tom D. Jensen, and exhibiting to him the said original map or drawing made by him of the claims in controversy, and their respective positions so that in the event the said witness denies that he ever made the statements or caused them to be made, or denies that he made the said map or drawing, or sent the said telegram that the defendants can prove at the trial that he did so make the said statements in said letters and that he did send the said telegram and that he did make the said map and drawing and cause them to be sent to the said Tom D. Jensen, and so that if the said witness admits that he did make and send the said letters, telegrams and map, that the same may be used at the time of the trial to impeach the said witness if his [110] evidence is used by the plaintiff, and to show and prove that he made other and different contradictory statements prior and at other times than the evidence given by him before the Commis-

sioner at the time his deposition was so taken, as above alleged.

That defendants desire to have the trial of this cause continued until the spring equity term so that the deposition of said Andrew Jensen may be retaken upon the further interrogatories served and filed in the above-entitled action, because the open season is about to close at Nome, and it will be impossible to have the said deposition returned to Nome before the month of February, 1912, as the same will have to be returned by the winter mails.

That by retaking the deposition and re-examining the said witness, Andrew Jensen, the defendants will prove by said witness that he wrote the letters quoted above, that he sent the telegram herein referred to and that he made and drew the map or drawing herein referred to.

The defendants further expect to prove, and will prove, by the said witness that in the month of July, and prior thereto, he talked to other and different persons on behalf of the Pioneer Mining Company, the plaintiff in this law suit as shown by the said telegram; that the said Andrew Jensen received the said sum of twelve hundred dollars at Buffalo, N. D., from the plaintiff, or its agents, and will be able to show the manner and method by which the said money was so paid; that defendants will prove by said witness that at the time he answered the second letter above referred to, he had a blue-print of the ground in controversy, made by Arthur Gibson in 1902, very similar to the one offered to him by the plaintiff at the cross-examination, at the taking of

the said deposition at Fargo, on September 19th, 1911, and with [111] the said blue-print spread in front of him, he wrote to his said son, Tom Jensen, that he was unable to identify the position of the claims in the vicinity of Moonlight Springs, from the said blue-print, and in order to give a correct idea of the way the said claims were located, he drew the said map or drawing of his own to locate said claim; that if the said witness denies that he had such a blue-print, the defendants will prove, at the trial, that he did have the Gibson survey, and the defendants will produce the said map at the trial of this action, and show the Court that the same is in all respects similar to the map used by the plaintiff at the time of the taking the said deposition, and will produce the said map so sent to said Andrew Jensen at the time of the trial to show the Court that the same is similar in all respects to the map exhibited to said Andrew Jensen at the time of the taking of his deposition by the plaintiff, Pioneer Mining Company.

That affiant has been advised by his attorneys that the only way that the said letters, telegram and map or drawing made by the said Andrew Jensen can now be used at the trial of said action is by exhibiting the same to the said Andrew Jensen for identification, admission or denial; that W. N. Grant, the locator of the Grant claim, under which the defendants in this action claim the ground in controversy, has long since been deceased and defendants have no other way of denying, refuting and impeaching the statements made by the said Andrew Jensen in his

said deposition, other than by showing that the same are absolutely and utterly false by his own prior statements, telegram and drawing, in so far as the same refer to the location of said claims, their positions and the acts and statements attributed to the said W. N. Grant are concerned; that defendants have no other ways or means of refuting the said statements of the said Andrew Jensen in his said deposition, other than by retaking his said deposition and identifying [112] the said exhibits.

That as a further and additional reason why the said trial should be continued at this time, the last steamer leaving the port of Nome for Seattle during the present open season, leaves on Sunday, the 29th day of October, 1911, only four (4) days distant; that if this cause is set for trial it will be necessary for the defendants to take the deposition of two or three witnesses who are about to leave on the steamer "Victoria" on said 29th day of October; that owing to the number of legal questions that will arise as shown by the pleadings, in this case, it will be impossible to reach the defendants' case before said time and, therefore, it will be necessary to take the depositions while the said trial would be progressing, some of said depositions requiring a great length of time to take; that defendants intend to and expect to take the said depositions during this present week, so as to be ready for trial of this cause in the month of February, as soon as the said Jensen's deposition is returned; that affiant has stated his case to his counsel and attorneys; and has been fully advised that it is impossible for him to safely go to trial in

this action without the right to use the said exhibits at the trial if the plaintiff uses the said deposition of the said witness Andrew Jensen; that defendants have been advised by their attorneys that they have several meritorious defense in law and fact to said action.

Wherefore affiant prays that the Court grant defendants' motion to continue the trial of said action until the month of February, 1912.

M. D. McCUMBER.

Subscribed and sworn to before me this 25th day of October, 1911.

[Notarial Seal] WILLIAM A. GILMORE,
Notary Public in and for the District of Alaska.

[113]

**Exhibit "A" [to Affidavit of M. D. McCumber on
Motion for Continuance].**

My dear father:—

I wrote you sometime since in regard to come litigation there was coming up in regard to your Bench No. 1 on Moonlight. The Pioneer Mining Company now holds your title to that ground. You remember the ground Grant located, you were a witness on his location notice. According to his location notice his claim joins to some extent Bob Lyng's Moonlight claim. You know whether it did or not. Did Grant's claim take in some of the willows or flat ground or was it entirely on the rock pile?

I am sending you a map which shows your No. 6 Bench the Lyng Moonlight Claim and your No. 1 Moonlight Bench which the Pioneer people now

claim take the best portion of the Grant claim; that part which I have lined in red ink. Now if I remember correctly your Moonlight Claim was further away from your No. 6 Bench and came quite a ways from touching it. Your No. 6 Bench on this map is well established and recognized. Now I wish you would trace on the inclosed map what you believe is the correct boundaries of the No. 1 Moonlight Bench Claim.

A couple of boys have put several years earnings in to discover the pay streak on the Grant Claim, now the Pioneer Company is jumping onto their necks and trying to take it away from them. If these boys are entitled to this ground as the Grant Claim I would like to see them hold it and you would be doing several people a considerable favor if you could help them out. If they are not entitled to it the sooner that they find it out the better for them.

I wish you would answer this by return mail also send back the map. You do not need to fear that this will involve you in any way. Please write immediately so that your reply will come in by the winter mail.

Very truly your son,

TOM. [114]

And be it further remembered that the notices for retaking the deposition of the witness Andrew Jensen, considered by the Court, are in words and figures as follows:

*In the District Court for the District of Alaska,
Second Division.*

No. 2245.

PIONEER MINING COMPANY, a Corporation,
Plaintiff,

vs.

THE PACIFIC COAL & TRANSPORTATION
COMPANY, a Corporation, M. D. McCUM-
BER, JOHN DOE and RICHARD ROE,
Defendants.

**Notice of Commission to Take Deposition of Andrew
Jensen on Further Redirect Interrogatories
Propounded and Served Herewith.**

To the Pioneer Mining Company, a Corporation,
Plaintiff, and to Messrs. G. J. Lomen and O. D.
Cochran, Attorneys for Said Plaintiff, Pioneer
Mining Company:

You and each of you please take notice that the
defendants, the Pacific Coal & Transportation Com-
pany, a corporation, and M. D. McCumber, will
apply to the clerk of the above-entitled court at his
office in the courthouse, on Tuesday, October 24th,
1911, at the hour of ten o'clock A. M., for a commis-
sion to be issued to E. C. Gearey, Jr., clerk of the Dis-
trict Court, Third Judicial District, Cass County, N.
D., residing at Fargo, in said Cass County, State of
N. D., to take the deposition of Andrew Jensen, a
witness residing in Cass County, near Fargo, N. D.;
said deposition to be taken on written interrogatories
to be filed with the clerk of the above-entitled court,

and mailed to said commissioner. [115]

Attached hereto are the further redirect interrogatories to be propounded to the said witness on behalf of said defendants;

And you are further notified to prepare and serve and file, on or before said date above mentioned, any recross-interrogatories desired by you to be propounded to said witness by said commissioner.

Dated at Nome, Alaska, this 20th day of October, A. D. 1911.

ELWOOD BRUNER,

Attorney for Pacific Coal & Transportation Company.

WILLIAM A. GILMORE, and

GEO. B. GRIGSBY,

Attorneys for M. D. McCumber.

In the District Court for the District of Alaska, Second Division.

No. 2245.

PIONEER MINING COMPANY, a Corporation,
Plaintiff,

vs.

THE PACIFIC COAL & TRANSPORTATION
COMPANY, a Corporation, M. D. McCUM-
BER, JOHN DOE and RICHARD ROE,
Defendants.

Notice for Commission to Take Deposition of Andrew Jensen on Further Interrogatories Propounded and Served Herewith.

To the Pioneer Mining Company, a Corporation, Plaintiff, and to Messrs. G. J. Lomen and O. D. Cochran, Attorneys for said Pioneer Mining Company: [116]

You and each of you will please take notice that the defendants Pacific Coal & Transportation Company, a corporation and M. D. McCumber, will apply to the clerk of the above-entitled court at his office in the Courthouse in Nome, Alaska, on Wednesday, November 1st, 1911, at the hour of nine o'clock A. M. for a commission to be issued to E. C. Gearey, Jr., Clerk of the District Court, Third Judicial District, Cass County, North Dakota, residing at Fargo, in said Cass County, N. D., to take the deposition of Andrew Jensen a witness residing in said Cass County near Fargo, N. D.; said deposition to be taken on written interrogatories heretofore served upon you on the 20th day of October, 1911, and filed of record in the office of the Clerk of the above-entitled court, as well as further interrogatories served and filed herewith, all of said interrogatories to be propounded to said witness in behalf of said defendants:

And you are further notified to propound and serve and file on or before said date above mentioned, any cross or recross-interrogatories desired by you to be propounded to said witness by said commissioner.

This further notice is given to you and each of you

for the reason that you have objected because the defendants failed to give you five (5) full days' notice at the time of serving a former notice upon you on said 20th day of October, 1911.

Dated at Nome, Alaska, this 26th day of October, A. D. 1911.

ELWOOD BRUNER,

Attorney for Defendant Pacific Coal & Transportation Company.

GEO. B. GRIGSY and

WILLIAM A. GILMORE,

Attorneys for Defendant M. D. McCumber. [117]

And be it further remembered that the interrogatories to be propounded to the witness, Andrew Jensen, upon which the said motion for a continuance was based, and which were considered by the Court, were in words and figures as follows:

In the District Court for the District of Alaska, Second Division.

No. 2245.

PIONEER MINING COMPANY, a Corporation,
Plaintiff,

vs.

THE PACIFIC COAL & TRANSPORTATION
COMPANY, a Corporation, M. D. McCUM-
BER, JOHN DOE and RICHARD ROE,
Defendants.

**Redirect Interrogatories to be Propounded to the
Witness Andrew Jensen.**

Redirect Inter.

No. 1. Q. Mr. Jensen, do you know Mr. Tom D. Jensen of Nome, Alaska, and if so, state whether or not he is your son.

No. 2. Q. If, in answer to the last interrogatory you state that Tom D. Jensen of Nome, Alaska, is your son, please state whether or not you received any letters from him, written at Nome, Alaska, during the winter of 1910 and 1911, with reference to the ground in controversy in the above-entitled action.
[118]

No. 3. Q. If, in answer to the last interrogatory you state that you did receive a letter or letters from your son, Tom D. Jensen, please state whether or not you now have those letters in your possession and if so hand them to the commissioner taking your deposition and have them marked and attached to your deposition.

No. 4. Q. Please state whether or not you wrote or caused to be written any answers to the said letters received by you to the said Tom D. Jensen, and if so, how many letters.

No. 5. Q. If, in answer to the last interrogatory you state that you wrote two letters to

said Tom Jensen, or caused them to be written, please give the dates of said letters.

No. 6. Q. If in answer to a preceding interrogatory you state that along about January, 1911, you wrote or caused to be written a letter to your son Tom Jensen, in reply to one from him about the ground in controversy, please state if it is not a fact that in said letter you wrote to him in substance as follows:

“Enclosed find raw draft of my Bench claim on Anvil Creek; it starts from the lower half of No. 1 Below on on Anvil then butting against Lindblom’s Moonlight claim and then following along Moonlight claim towards Anvil Mountain ending not very far from the base of the mountain. Grant’s claim starts right from where mine ends up the side of Anvil Mountain. There is a vale in Anvil Mountain and Grant’s claim runs up that vale. At the time I staked the bench on Anvil there was a spring on my claim. My Bench on Moonlight you will see in the drawing was staked the the full length towards Little Creek bounded on the end by the upper half of Lindblom’s Moonlight claim. You can figure the directions out from the drawing. My Moonlight claim was not

so very far from the base of Anvil mountain, possibly 100 feet."

No. 7. Q. Please examine Exhibit "A" attached to these [119] interrogatories and state whether or not the drawing marked Exhibit "A" is the raw draft or drawing referred to in said letter.

No. 8. Q. Is it not a fact that the said drawing is the drawing referred to in said letter, and that the same was drawn by you in the month of January, 1911, at your home near Buffalo, N. D., and mailed to your son Tom Jensen at Nome, Alaska, to illustrate the placer claims in the vicinity of Moonlight Springs near Nome, and that said drawing was made by you for that express purpose?

No. 9. Q. Is it not a fact that you used the language in substance quoted in interrogatory No. 6 above to your son Tom Jensen in the letter written to you to him for the purpose of explaining the said map or drawing?

No. 10. Q. Please examine Exhibit "B" attached to these interrogatories and state whether or not you received the original of said letter, being a letter from your son Tom Jensen to you, dated Nome, Alaska, December 12th, 1910.

No. 11. Q. If you answer the preceding interrogatory and state that you did receive the said letter from your son Tom Jensen,

at Buffalo, N. D., in February or March, 1911, please state if it is not a fact that you thereupon answered said letter, or caused the same to be answered immediately thereafter by stating in a letter to your son, Tom Jensen, in substance as follows:

“Received your letter together with map of claims. It is impossible for me to do any marking on the map because I think the claims do not seem to be in the same positions. My Bench on Anvil so far as I remember was staked along the lower half of No. 1 Below Discovery on Anvil Creek, [120] running the whole width because after running some distance towards Moonlight Creek I struck Robert Lyng’s claim on Moonlight. Then, I followed up the Moonlight then again along the upper end of Moonlight claim until I had the 1320 feet from the location stake on No. 1 Below. I don’t remember how many feet the upper end of my claim was, tho I think it was several hundred.

Now, Grant’s location stake was set right beside mine at the upper end of Moonlight claim, running up Anvil Mountain.

There was some flat ground between the mountain and our stakes so Grant’s

claim takes in some of the flat ground between the end of my claim and the base of Anvil mountain.

My Bench on Moonlight was some distance from the upper half of my Anvil Bench. How far I do not remember. My Bench on Moonlight started from the upper end of Robert Lyng's claim, taking in the willows on a kind of a high bench but not clean up to the base of the mountain. There was some space between the base of the mountain and my claim. If I remember correctly the last year I was there I think Robert Lyng's stakes had been moved some up towards Anvil Mountain from where they were originally located. I think this was done in order to take in all the springs. This is about all the information I can give you."

No. 12. Q. Please state if Tom D. Jensen is the same person to whom you gave or deeded or conveyed the half interest in said Bench claim to in 1899 or 1900, as mentioned in your deposition previously taken.

No. 13. Q. If, in answer to the preceding interrogatory you state that you did write to your said son, Tom Jensen, letters in substance as quoted in preceding questions, please state whether or not you were trying to deceive him by what you

wrote and by the map you drew or whether you were telling him the truth in said letters and by said map.

No. 14. Q. In your deposition previously taken you said that the only person you talked to about the location of these claims in this action was a Mr. Holt, a member of the law firm of Engerud, Holt and Frame, of Fargo, N. D., during the month of August, 1911. Please examine Exhibit "C" attached [121] to these interrogatories and state whether or not you sent or caused to be sent, from Buffalo, N. D., to your son Tom Jensen, at Nome, Alaska, on the 28th day of July, 1911 a telegram in substance and to that effect.

No. 15. Q. If you answer the last interrogatory in the affirmative and state that you did send a telegram to Tom Jensen in words and substance as given in Exhibit "C," please state if it was true that the Pioneer Mining Company, or its agents were in Buffalo, N. D., in the month of July urging you to come to Alaska at their expense.

No. 16. Q. Please state to whom you requested the Pioneer Mining Company to wire twelve hundred dollars to the Buffalo Bank for you as stated in your said telegram.

- No. 17. Q. Please state whether or not the Pioneer Mining Company paid you the twelve hundred dollars requested by you to be wired to the Buffalo bank, or any other sum or sums, giving the time, manner of payment and by whom.
- No. 18. Q. Are you acquainted with Mrs. G. J. Lomen, the wife of the attorney for the plaintiff, Pioneer Mining Company, at Nome, Alaska?
- No. 19. Q. If you answer the last interrogatory in the affirmative state when you became acquainted with her and where.
- No. 20. Q. Please state whether or not Mrs. Lomen visited at your farm near Buffalo, N. D., in the month of July, 1911, and if so how long she remained the guest of you and your wife at Buffalo. [122]
- No. 21. Q. Please state if it is not a fact that Mrs. Lomen is related by marriage to a member of the law firm of Engerud Holt and Frame, and if so state the relation and to which member of the firm.
- No. 22. Q. Please state who wired from Buffalo or Fargo to the Pioneer Mining Company or its attorneys at Nome, with reference to paying you the said sum of twelve hundred dollars.
- No. 23. Q. Examine Exhibit 'D' attached to these interrogatories and state if you received the said telegram.

- No. 24. Q. If you answer the last interrogatory in the affirmative that you did receive the said telegram please state if it is not a fact that you sent the telegram Exhibit "C" in reply thereto.
- No. 25. Q. In your letters written to your son last winter when you were telling all you knew about the claims in the vicinity of Moonlight Springs, why didn't you tell about the Nelson claim?
- No. 26. Q. When you drew the raw draft or drawing that you sent to your son Tom in your letter, why did you not draw in the said Nelson claim if you staked your Bench on Moonlight adjoining it, as you have testified in your deposition?
- No. 27. Q. Please hand to the Commissioner any and all letters or telegrams received by you or sent by any person connected with this litigation, or by any other person on behalf of any person connected with the litigation pertaining to any matter, or thing connected with the controversy in this action.
- No. 28. Q. If, in answer to interrogatory No. 6 you state [123] that you caused your daughter Katie Jensen, on or about the 25th day of January, 1911, to write a letter for you to your son Tom Jensen, at Nome, in reply to one received by you from him, please state if it is not a

fact that you stated to her at that time, you and she being present, and that she wrote at your dictation, in substance the following language:

“Enclosed find a raw draft of my Bench claim on Anvil Creek; It starts from the lower half of No. 1 Below on Anvil then butting against Lindblom’s Moonlight claim and then following along Moonlight claim towards Anvil Mountain ending not very far from the base of the mountain. Grant’s claim starts right from where mine ends up the side of Anvil Mountain. There is a vale in Anvil Mountain and Grant’s claim runs up that vale. At the time I staked the bench on Anvil there was a spring on my claim. My Bench on Moonlight you will see in the drawing was staked the full length towards Little Creek bounded on the end by the upper half of Lindblom’s Moonlight claim. You can figure the directions out from the drawing. My Moonlight claim was not so very far from the base of Anvil Mountain, possibly 100 feet.”

No. 29. Q. If in answer to interrogatory No. 11 you state that you caused your daughter Katie Jensen, to write to your son Tom Jensen, in reply to a letter received by you from him, please state if it is not a fact that you stated to her at that time

and place, you and she being present, and that she wrote at your dictation, in substance the following language:

“Received your letter together with map of claims. It is impossible for me to do any marking on the map because I think the claims do not seem to be in the same positions. My Bench on Anvil so far as I remember was staked along the lower half of No. 1 Below Discovery on Anvil Creek, running the whole width because after running some distance towards Moonlight Creek, I struck Robert Lyng’s claim on Moonlight. Then, I followed up the Moonlight then again along the upper end of Moonlight claim until I had the 1320 feet from the location stake on No. 1 Below. I don’t remember how many feet the upper end of my claim was, tho I think it was several hundred. [124]

Now, Grant’s location stake was set right beside mine at the upper end of Moonlight claim, running up Anvil Mountain.

There was some flat ground between the mountain and our stakes so Grant’s claim takes in some of the flat ground between the end of my claim and the base of Anvil Mountain.

My Bench on Moonlight was some dis-

tance from the upper half of my Anvil Bench. How far I do not remember. My Bench on Moonlight started from the upper end of Robert Lyng's claim, taking in the willows on a kind of a high bench but not clean up to the base of the mountain. There was some space between the base of the mountain and my claim. If I remember correctly the last year I was there I think Robert Lyng's stakes had been moved some up towards Anvil Mountain from where they were originally located. I think this was done in order to take in all the springs. This is about all the information I can give you."

Respectfully submitted,

ELWOOD BRUNER,

Attorney for Defendant Pacific Coal & Transportation Company.

GEO. B. GRIGSBY and

WILLIAM A. GILMORE,

Attorneys for Defendant M. D. McCumber.

Exhibit "C" [to Redirect Interrogatories to be Propounded to Witness Andrew Jensen].

SIGNAL CORPS, UNITED STATES ARMY.

Telegram.

RECEIVED AT

11 FD WN D 23 Paid

U Buffalo N. D. July 28, 1911.

Tom Jensen,

Nome?

Pioneer Company here wanted me come Alaska

their expense requested wire twelve hundred dollars
buffalo bank to pay time expenses would then go.

10 56 am

ANDREW JENSEN.

**Exhibit "D" [to Redirect Interrogatories to be Pro-
pounded to Witness Andrew Jensen].**

SIGNAL CORPS, UNITED STATES ARMY.

Telegram.

[125]

SEND the following Message:

Nome July 15, 1911.

Andrew Jensen

Buffalo Cass Co.

North Dakota.

McCumber wants you witness his case trial Sep-
tember fifth. Expenses and time guaranteed.

TOM D. JENSEN.

**Exhibit "B" [to Redirect Interrogatories to be Pro-
pounded to Witness Andrew Jensen].**

Dec. 12th, 1910.

My dear father:—

I wrote you sometime since in regard to some liti-
gation there was coming up in regard to your bench
No. 1 On Moonlight. The Pioneer Mining Company
now holds your title to that ground. You remember
the ground Grant located, you were a witness on his
location notice. According to his location notice his
claim joins to some extent Bob Lyng's Moonlight
claim. You know whether it did or not. Did
Grant's claim take in some of the willows or flat
ground or was it entirely on the rock pile?

I am sending you a map which shows your No. 6
Bench the Lyng Moonlight Claim and your No. 1

Moonlight Bench which the Pioneer people now claim take the best portion of the Grant claim; that part which I have lined in red ink. Now if I remember correctly your Moonlight Claim was further away from your No. 6 Bench and came quite a ways from touching it. Your No. 6 Bench on this map is well established and recognized. Now I wish you would trace on the inclosed map what you believe is the correct boundaries of the No. 1 Moonlight Bench Claim.

A couple of boys have put several years earnings in to discover the pay streak on the Grant Claim, now the Pioneer Company is jumping onto their necks and trying to take it away from them. If these boys are entitled to this ground as the Grant Claim I would like to see them hold it and you would be doing several people a considerable favor if you could help them out. If they are not entitled to it the sooner that they find it our the better for them.

I wish you would answer this by return mail also send back the map. You do not need to fear that this will involve you in any way. Please write immediately so that your reply will come in by the winter mail.

Very truly your son,

TOM. [126]

Exhibit "A"

Amos M

Green
plain

My bench
on Main light

Spring

noon light beam

Not clear

Carroll in case

Be it further remembered that on the 26th day of October, 1911, the said written motion for a continuance came on regularly to be heard before the Court, the plaintiff being represented by its attorneys of record, and the defendants being represented by their attorneys of record, the said motion for a continuance was argued by counsel for plaintiff and counsel for defendants and submitted to the Court and thereafter on the 27th day of October, 1911, the Court rendered its decision on said motion, denying the defendants' motion for a continuance, to which ruling of the Court the defendants then and there excepted, which said exception was allowed by the Court.

AND BE IT FURTHER REMEMBERED that thereafter on the 2d day of November, 1911, the defendants served upon plaintiff and filed their written motion for a change of trial judge, which said motion was based upon all of the records, files, depositions and proceedings in the above-entitled action and upon the affidavits of M. D. McCumber and Elwood Bruner, served and filed with said motion; that said written motion and the said affidavits served and filed therewith, were in words and figures as follows:

*In the District Court for the District of Alaska,
Second Division.*

No. 2245.

PIONEER MINING COMPANY,

Plaintiff,

vs.

THE PACIFIC COAL & TRANSPORTATION
COMPANY, a Corporation, M. D. McCUM-
BER et al.,

Defendants.

Motion for Change of Trial Judge. [128]

Comes now defendants and move the Court under section 5, Part III, chapter 1 of the Alaska Code for an order assigning and setting the above-entitled cause for trial in the above-entitled court, at Nome, Second Division, District of Alaska, before another judge of the district court for the District of Alaska, at such time as such Judge will appear and try the cause.

This motion is made and based upon the affidavits of defendant M. D. McCumber and of Elwood Bruner, one of the attorneys for defendant Pacific Coal & Transportation Company, served and filed herewith, and upon all of the records, files, depositions and proceedings in the above-entitled action.

Dated at Nome, Alaska, this 2d day of November, A. D. 1911.

ELWOOD BRUNER,

Attorney for Defendant P. C. & T. Co.

GEO. B. GRIGSBY, and

WILLIAM A. GILMORE,

Attorneys for Defendant M. D. McCumber.

*In the District Court for the District of Alaska,
Second Division.*

No. 2245.

PIONEER MINING COMPANY, a Corporation,
Plaintiff,

vs.

THE PACIFIC COAL & TRANSPORTATION
COMPANY, a Corporation, M. D. McCUM-
BER et al.,

Defendants.

**Affidavit of M. D. McCumber [129] [in Support of
Motion for Change of Trial Judge, etc.].**

United States of America,
District of Alaska,—ss.

M. D. McCumber, being first duly sworn, deposes
and says:

That he is one of the answering defendants in the above-entitled action; that the said action was begun in November, 1910, and about eleven years after the location of the placer claims involved in the controversy, and more than two years after affiant had been mining and operating upon the ground in controversy, with full notice and knowledge during all of said years on the part of the plaintiff; that the said action was brought to issue in May or June, about the opening of navigation in 1911, and thereupon the defendants by motion, asked the Court to submit certain issues of fact, among others the question of possession, to a jury, the defendants by their answers, showing that they were in possession of the ground in controversy at the time said action was

begun, which said motion was denied by the Court; that thereafter certain depositions were taken in the cause and it became necessary for the defendants to procure a continuance of the trial of the said cause until the month of February, 1912, thus to enable affiant and his codefendant, to procure certain evidence material and necessary to their defense in said cause, and that the said evidence was in no wise cumulative; that without any counter showing or denial of the things and matters set forth in the motion and affidavits of affiant filed therein in support of said motion, the Court denied defendant's said motion for a continuance; that during all of the times since said action was begun, in November, 1910, the present Judge Honorable Cornelius D. Murane, was the presiding judge of the above-entitled court.

That affiant believes that the said judge of the [130] above-entitled court is biased through friendship, in favor of the plaintiff, Pioneer Mining Company, and is prejudiced and biased against the defendants, and that by reason of said bias and prejudice the said judge refused to grant the defendants a jury trial on the issues of fact prayed for, and also refused to grant a continuance of the trial of said action for a reasonable time to enable the defendants to prepare for trial, as prayed for by the defendants; that affiant believes that defendants cannot have a fair and impartial trial before the present Judge of this Court, by reason of the said prejudice and bias above alleged, and alleges that the said judge is disqualified from acting as trial Judge in said cause by reason thereof; that affiant is informed

and believes that one of the Judges of one of the other divisions of the District of Alaska, will be in Nome upon the opening of navigation, 1912, and about the month of June, for the purpose of trying certain suit or suits now pending and at issue in said court, which said suit or suits the said Judge Murane has refused to try by reason of disqualification on the grounds of having been formerly associated as counsel in said case or cases.

M. D. McCUMBER.

Subscribed and sworn to before me this 1st day of November, A. D. 1911.

[Seal]

L. W. HAYDEN,

Notary Public in and for the District of Alaska.

[131]

*In the District Court for the District of Alaska,
Second Division.*

No. —.

PIONEER MINING COMPANY, a Corporation,
Plaintiff,

vs.

THE PACIFIC COAL & TRANSPORTATION
COMPANY, a Corporation, M. D. McCUM-
BER et al.,

Defendants.

**Affidavit of Elwood Bruner [in Support of Motion for
Change of Trial Judge, etc.].**

United States of America,

District of Alaska,—ss.

Elwood Bruner, being first duly sworn, deposes
and says:

I am attorney of record for the defendant Pacific Coal & Transportation Company, one of the defendants in this cause; I have joined with my codefendant, M. D. McCumber, in asking for a change of trial Judge of this suit; that I am a regularly admitted and practicing attorney of the District Court, District of Alaska, Second Division; that I am familiar with the District Court for the District of Alaska, as now consisted; that there are four resident Judges within the District of Alaska, presiding over the four judicial divisions thereof, one at Juneau, one at Valdez, one at Fairbanks and one at Nome; that I am one of the attorneys of record in the case of Rogers et al. vs. Halla et al. and am a defendant in said action; that the defendants in said action of Rogers et al. vs. Halla et al., have repeatedly moved the Court to either try the said action or call to Nome one of the other Judges of the District Court of Alaska to proceed to trial thereof; [132] that the Judge of the above-entitled court has refused to try said cause on the ground of disqualification, but has stated in open court when said matter was before the court, that it was his intention to invite one of the other Judges of the District Court, District of Alaska, to come to Nome during the open season of 1912, to try said action; that the said action of Rogers et al. vs. Halla et al., is a local action involving the titles to mining lands within the Nome district; that the matters involved in the above-entitled action of the Pioneer Mining Company vs. The Pacific Coal & Transportation Company et al., is a local action involving the title

to mining land within the Nome Mining District, and if the above-entitled court will assign and set the trial of the above-entitled action at the same time as the case of Rogers et al. vs. Halla et al., both of said actions can be tried during the open season of 1912 at Nome, Alaska, where all of the parties and many of the witnesses reside.

That if said assignment is made affiant believes that justice can be done between the parties to the said action.

ELWOOD BRUNER.

Subscribed and sworn to before me this 1st day of November, A. D. 1911.

[Seal]

L. W. HAYDEN,

Notary Public in and for the District of Alaska.

And be it further remembered that thereafter on the 4th day of November, 1911, the said motion came on regularly to be heard before the Judge of the above-entitled court, the plaintiff being represented by its attorneys of record, and the defendants being represented by their attorneys of record, and thereupon the plaintiff read to the Court the following [133] written objections to the motion of the defendants, which said written objections were in words and figures as follows:

*In the District Court for the District of Alaska,
Second Division.*

PIONEER MINING COMPANY,

Plaintiff,

vs.

PACIFIC COAL & TRANSPORTATION COM-
PANY et al.,

Defendants.

**Objections to Motion [for Change of Trial Judge,
etc.].**

Now comes the plaintiff above named, and objects to the motion and application of the defendants herein for a change of venue, or the trial of said cause by a Judge of another District, and to the postponement of the trial said action for such purpose or purposes, on the grounds following, to wit:

1. The application of the defendants does not state facts sufficient to authorize the Court to change the venue of said action, or to call in another Judge to try said case, or to appear or preside during the disposition of said case, or to change the venue thereof.

2. That said application comes too late and after the case has been set down for trial, and defendants are guilty of laches in making said application.

3. The motive for the application is clearly delay, and the application is not made in good faith.

4. Said application is wholly based upon the belief of the applicant M. D. McCumber, and is without any valid reason or ground in fact, stated or alleged. [134]

5. It does not appear that the several defendants in said action have joined in said application.

6. It does not appear that any Judge of any other District will appear and preside during the disposition of said cause, or try said case.

7. The application is not authorized by law, but is contrary to law.

G. J. LOMEN,

O. D. COCHRAN,

GEO. D. SCHOFIELD,

Attorneys for Plaintiff.

*In the District Court for the District of Alaska,
Second Division.*

PIONEER MINING COMPANY,

Plaintiff,

vs.

THE PACIFIC COAL & TRANSPORTATION
COMPANY et al.,

Defendants.

**Further Objections to Allowance of Defendants'
Motion to Have Case Set for Trial Before
Another Judge.**

Comes now the plaintiff in the above-entitled cause and hereby resists and objects to the allowance by the Court, of the motion of the defendants filed herein, to have the above-entitled cause assigned for trial before another Judge of the District of Alaska, or to the granting to a continuance of the trial of this cause for such purpose, for the following reasons:

First. Because the affidavits filed in support of said [135] motion are insufficient in law to establish any bias or prejudice in relation to said cause

or any party related therewith on the part of the Judge of this Court.

Second. Because the affidavits filed in support of said motion, do not recite any fact or facts upon which the defendants rely to establish the existence of prejudice or bias on the part of the trial Judge of this Court.

G. J. LOMEN,
GEO. D. SCHOFIELD,
O. D. COCHRAN,

Attys. for Plts.

And thereafter the said motion and objections were argued to the Court by the attorneys for plaintiff and the attorneys for the defendants, and submitted to the Court, and the Court thereupon rendered its decision denying the said motion of the defendants, to which ruling of the Court the defendants then and there excepted, which said exception was allowed by the Court.

And be it further remembered that thereupon on said 4th day of November, 1911, the Court, over the objection of the defendants, upon the motion of plaintiff, set said cause for trial on Monday the 13th day of November, 1911, to which ruling of the Court the defendants then and there excepted, which said exception was allowed by the Court.

And now in furtherance of justice and that right may be done, the defendants present the foregoing bill of exceptions No. 2, and pray that the same may be settled, allowed, signed and certified by the Court,

as allowed by law.

ELWOOD BRUNER,

Attorney for Defendant Pacific Coal & Transportation Company.

GEO. B. GRIGSBY and

WILLIAM A. GILMORE,

Attorneys for Defendant M. D. McCumber. [136]

The foregoing Bill of Exceptions having been served, filed and presented, as required by law, and being full, true and correct, is hereby settled and allowed.

Done in open Court this 30th day of Dec., 1911.

CORNELIUS D. MURANE,

District Judge.

Service of the above and foregoing proposed bill of exceptions acknowledged by receipt of a copy, this 10th day of November, 1911.

O. D. COCHRAN,

Of Attorneys for Plaintiff.

[Endorsed]: No. 2245. In the District Court for the District of Alaska, Second Division. Pioneer Mining Company, a Corporation, Plaintiff, vs. Pacific Coal & Transportation Company, M. D. McCumber et al., Defendant. Defendants' Proposed Bill of Exceptions No. 2. Filed in the office of the Clerk of the District Court of Alaska, Second Division, at Nome. Nov. 10, 1911. John Sundback, Clerk. By —————, Deputy. C. William A. Gilmore, Attorney at Law, Nome, Alaska, Attorney for M. D. McCumber. Vol. 9, Orders and Judgments, p. 232. C.

Refiled in the office of the Clerk of the District Court of Alaska, Second Division, at Nome. Dec. 30, 1911. John Sundback, Clerk. By J. Allison Bruner, Deputy. [137]

*In the District Court for the District of Alaska,
Second Division.*

No. 2245.

PIONEER MINING COMPANY, a Corporation,
Plaintiff,

vs.

THE PACIFIC COAL & TRANSPORTATION
COMPANY, a Corporation, M. D. McCUM-
BER, JOHN DOE and RICHARD ROE,
Defendants.

Motion for New Trial.

Come now defendants Pacific Coal & Transportation Company and M. D. McCumber, and move the Court for an order vacating and setting aside the decision of the Court heretofore rendered in the above-entitled action, and granting them a new trial herein, for the following reasons:

1. Insufficiency of the evidence to justify the decision of the Court, and that the same is against law.

(a) Insufficiency of the evidence to justify finding No. IV made and signed by the Court.

(b) Insufficiency of the evidence to justify the Court's finding No. V made and signed by the Court.

(c) Insufficiency of the evidence to justify the Court's finding No. VI made and signed by the Court,

that the plaintiff, Pioneer Mining Company was, on the 7th day of November, 1910, the date of the commencement of this action, and for a long time prior thereto had been in the actual occupancy and exclusive possession of the whole of said mining claim known and described by the plaintiff as Bench No. 1 Moonlight, and that the defendants were not in the possession of any portion of said mining [138] claim on said 7th day of November, 1910, nor they or either of them have been in the occupation or possession of any part of said mining claim for a long time prior thereto; and insufficiency of the evidence to justify the Court in its decision in finding that the plaintiff was in the possession or occupancy of the ground in controversy at the time it commenced this suit or at any time, or at all.

(d) Insufficiency of the evidence to justify the Court in making finding No. VII.

(e) Insufficiency of the evidence to justify the Court in making finding No. VIII.

(f) Insufficiency of the evidence to justify the Court in making its finding No. IX.

(g) Insufficiency of the evidence to justify the Court in making its finding No. X.

(h) Insufficiency of the evidence to justify the Court in making its finding No. XI.

(i) Insufficiency of the evidence to justify the Court in making its finding No. XII.

(j) Insufficiency of the evidence to justify the Court in making its finding No. XIII, particularly in finding that the defendant, M. D. McCumber was not on the 7th day of November, 1910, the date upon

which this action was commenced, and for a long time prior thereto, in the open, notorious and exclusive possession of the ground in controversy, and particularly that the defendant, M. D. McCumber, has not since been in such possession, and particularly that the defendant, M. D. McCumber, did not have on said date, mining equipment upon the ground in controversy.

(k) Insufficiency of evidence to justify the Court in making its finding No. XIV. [139]

(l) Insufficiency of the evidence to justify the Court in its finding No. XV.

(m) Insufficiency of the evidence to justify the Court in its finding No. XVI.

(n) Insufficiency of the evidence to justify the Court in its finding No. XVII.

(o) Insufficiency of the evidence to justify the Court in its finding No. XVIII.

2. Errors in law occurring at the trial and excepted to by the defendants:

(a) The Court erred in denying the defendants the right to show and prove that the plaintiff held the ground south of the Bob Lyng and Grant claims under the location and title of the Jerome Fraction, and that during the years from 1902 to 1907 the plaintiff performed the annual assessment work thereon and duly recorded proof of labor for the same.

(b) The Court erred in permitting the witness, Arthur Gibson, over the objection of the defendants, to testify that certain alleged stakes and corners were indicated and pointed out to him by one C. L. Spanggard, said Spanggard not a party to the action,

the said evidence being purely hearsay.

(c) The Court erred in permitting the plaintiff to amend their complaint during the time of the trial, by changing the description of the northwest corner of their alleged placer claim a distance of over 130 feet.

(d) The Court erred in permitting Plaintiff's Exhibit "A" to be admitted in evidence over the objection of the defendants, said exhibit containing many writings and markings that were not proven.

(e) The Court erred in not permitting the witness, Arthur Gibson, to testify that he had been employed by the plaintiff to coach the attorneys for plaintiff during the taking of depositions [140] prior to the trial.

(f) The Court erred in refusing to strike from the record at the request of defendants, certain hearsay evidence given by the witness Arthur Gibson, relating to certain stakes and markings which the said witness, Arthur Gibson, testified were indicated and pointed out by one C. L. Spanggard.

(g) The Court erred in not permitting the witness, Dan Jones, to testify that he had a certain blueprint with him upon the ground, at the time of making his survey, made by Arthur Gibson.

(h) The Court erred in refusing and denying the defendants' offer to prove that the defendant, McCumber, and his employees, were in occupancy and possession of the ground in controversy from the date upon which the suit was commenced until the date of the trial and during the trial.

(i) The Court erred in refusing to admit in evi-

dence Defendants' Exhibit No. 12, for identification, being a map of the ground in controversy and surrounding claims, made by the witness Dan Jones.

(j) The Court erred in denying the defendants the right to offer certain location certificates of water rights, made by them and their agents, upon the premises in controversy.

(k) The Court erred in not permitting the witness, E. L. Howard, to testify on behalf of the defendants, that during the time she had charge of the ground in controversy, that the plaintiff or its predecessors, never claimed or made claim to the ground in controversy, or any part thereof.

(l) The Court erred in not permitting the witness, Robert Lyng, to testify that the Pioneer Mining Company, or any of its predecessors, never claimed any portion of the Lyng or Moonlight claim as part and parcel of plaintiff's alleged Bench No. 1 Moonlight. [141]

(m) The Court erred in not permitting the witness, F. M. Warsing, on behalf of the defendants, to testify that the dumps that were situated on the ground in controversy, and extracted by those in privity with the defendants, were in plain sight, open and notorious to anyone passing over the ground in that vicinity.

(n) The Court erred in denying the defendants the right to show that no one molested witness, F. M. Warsing, while he was working on the ground in controversy under an option in privity with the defendant, Pacific Coal & Transportation Company.

(o) The Court erred in denying the defendants

the right to show by the witness, Ai Brown, that the plaintiff did not make any claim to the ground in controversy while the said witness was employed in working on the ground in controversy.

(p) The Court erred in refusing and denying the defendants the right to show by the witness, Adolph Meyer, that the development and prospecting work done by him indicated a channel running through the premises in controversy.

(q) The Court erred in refusing to permit the defendants to show by the witness, S. J. Bakke, that the Moonlight Water Company was a subsidiary company to the Pioneer Mining Company and maintaining its office with the Pioneer Mining Company, and that the Pioneer Mining Company controlled the Moonlight Water Company.

(r) The Court erred in denying the offer of the defendants to prove by the witness, J. W. Charles, that he resided on the Grant claim within the ground in controversy and as an employee of the defendant McCumber, from the first day of May, 1911, until the 7th day of July, 1911.

(s) The Court erred in refusing to permit the defendants to show and prove by the witness S. J. Bakke that the Moonlight [142] Water Company maintained its office with the Pioneer Mining Company and that said company was managed directly by Mr. Lindeberg, president of the Pioneer Mining Company through said witness as manager; and that the Pioneer Mining Company, during the time of the litigation between the Moonlight Water Company and Howard and Doverspike, lessees of the defend-

ant, Pacific Coal & Transportation Company, that the Pioneer Mining Company stood by during all of those years and did not assert title to the ground in controversy that was then being litigated.

(t) The Court erred in refusing to admit in evidence, at the request of the defendants, Defendants' Exhibit 50 for Identification, being a letter from the witness, Tom D. Jensen to W. A. Gilmore.

(u) The Court erred in refusing to admit in evidence, at the request of the defendants, plat or map identified by the witness, Tom D. Jensen, and marked Exhibit 51 for Identification, being a map or plat identified by the witness as one drawn by his father, Andrew Jensen, the locator of the plaintiff's alleged claim.

(v) The Court erred in refusing and denying the defendants the right to show by the witness, Tom D. Jensen, that he had an interest in placer claim known as Bench No. 1 Moonlight and that he was an equitable owner therein.

(w) The Court erred in refusing to allow the defendants to show by the witness Tom D. Jensen, that he was an owner and predecessor of the plaintiff, and that during his ownership there was no conflict between the placer claim known as the Lyng or Moonlight claim and Bench No. 1 Moonlight.

(x) The Court erred in refusing to permit the defendants to show that the witness Tom D. Jensen, while an owner in the claim No. 1 Bench Moonlight never asserted title or claimed that said placer claim conflicted in any way with the Grant [143] claim or the Lyng or Moonlight claim.

(y) The Court erred in refusing to allow the defendants to offer in evidence the complaint, answer, reply and decree in the case of Jafet Lindeberg et al. vs. George Doverspike et al.

(z) The Court erred in refusing to permit the defendant, M. D. McCumber, to testify and prove that the plaintiff attempted to buy his title to the ground in controversy prior to the institution of this action.

(aa) The Court erred in permitting the plaintiff to offer in evidence, over the objection of defendants, Exhibits "N" and "O," being the articles of incorporation and designation of agent of the Pacific Coal & Transportation Company.

Respectfully submitted,
ELWOOD BRUNER,

Attorney for Defendant Pacific Coal & Transportation Company,

WILLIAM A. GILMORE,

Attorney for Defendant M. D. McCumber.

Service of the above and foregoing motion for new trial acknowledged by receipt of copy, this 16th day of April, 1912.

G. J. LOMEN,
Of Attorneys for Plaintiff.

[Endorsed]: No. 2245. In the District Court for the District of Alaska, Second Division. Pioneer Mining Company, a Corporation, Plaintiff, vs. Pacific Coal & Transportation Co., M. D. McCumber et al., Defendants. Motion for New Trial. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Apr. 16, 1912. John Sundback, Clerk. By —————, Deputy. L.

William A. Gilmore, Attorney at Law, Nome, Alaska,
Attorney for M. D. McCumber. [144]

*In the District Court for the District of Alaska,
Second Division.*

Term Minutes, General, 1912, Term, beginning
February 5, 1912.

Saturday, April 20, 1912, at 10 A. M.

Court convened pursuant to adjournment.

Hon. CORNELIUS D. MURANE, District Judge,
presiding.

Upon the convening of Court the following proceedings were had:

2245.

PIONEER MINING CO.

vs.

PACIFIC COAL & TRANSPORTATION CO.
et al.

Upon consent of the parties the motion for new trial filed herein was called up, argued and submitted to the Court.

Thereupon the Court overruled and denied said motion for a new trial, defendants being allowed an exception to said order.

Thereupon the Court signed a decree in favor of plaintiff and ordered same filed.

Upon motion of Mr. William A. Gilmore, defendants were allowed a stay of execution for thirty days, and also thirty days in which to prepare, serve and file a bill of exceptions herein. [145]

*In the District Court for the District of Alaska,
Second Division.*

No. 2245.

PIONEER MINING COMPANY, a Corporation,
Plaintiff,

vs.

THE PACIFIC COAL & TRANSPORTATION
COMPANY, a Corporation, M. D. McCUM-
BER, JOHN DOE and RICHARD ROE,
Defendants.

Assignment of Errors.

Come now defendants, Pacific Coal & Transportation Company, a corporation, and M. D. McCumber, and assign the following errors upon which they will rely in prosecuting their said appeal to the Circuit Court of Appeals:

1.

That the Court erred in overruling and denying the defendants' motion for a jury trial.

2.

That the Court erred in overruling and denying the defendants' motion for an order to submit certain issues of fact raised by the pleadings to be determined by a jury.

3.

That the Court erred in overruling, refusing and denying the defendants' motion for a continuance of trial of this cause. [146]

4.

That the Court erred in overruling, refusing and

denying the defendants' motion for a change of trial Judge in this cause.

5.

That the Court erred in overruling defendants' objection to the use of the deposition of Andrew Jensen.

6.

That the Court erred in overruling the objection of the defendants to certain testimony of Jafet Lindeberg, a witness on behalf of plaintiff, as follows:

"Q. Now, why didn't you go ahead and get that patent at that time? Why didn't you go ahead with the proceedings?"

Mr. COCHRAN.—Objected to as wholly immaterial to any issue in this case.

The COURT.—Objection sustained."

Exception allowed.

"Q. Now, you knew that you could not obtain a patent—that you would have to litigate for the land in the land office—that is the true reason why you did not, is it not?"

Mr. SCHOFIELD.—Objected to as immaterial.

The COURT.—Objection sustained."

Exception allowed.

7.

That the Court erred in sustaining the plaintiff's objection to the following question propounded to the witness L. Stevenson:

"Q. The Pioneer Mining Company owns the Jerome Fraction, does it not?"

Mr. SCHOFIELD.—Objected to as wholly immaterial, [147] irrelevant, incompetent and not cross-examination.

The COURT.—Objection sustained.”
Exception allowed.

8.

That the Court erred in sustaining plaintiff's objection to the following question propounded to the witness, L. Stevenson on cross-examination:

“Q. Did you sign an affidavit swearing to the work that was done on the Jerome Fraction for the year 1903?

Mr. SCHOFIELD.—Objected to as wholly immaterial, not proper cross-examination and incompetent.

The COURT.—Objection sustained.”
Exception allowed.

9.

That the Court erred in sustaining the plaintiff's objection to the following question propounded to the witness L. Stevenson, on cross-examination:

“Q. Now, along in 1909, along about that time, the Pioneer tried to buy this ground, Mr. Stevenson, prior to the time you brought this suit?

Mr. SCHOFIELD.—Objected to as wholly immaterial and not proper cross-examination.

The COURT.—Objection sustained.”
Exception allowed.

10.

That the Court erred in admitting Plaintiff's Exhibit “I” in evidence over the objection of defendants. [148]

11.

That the Court erred in permitting the witness, Arthur Gibson, on direct examination, to give hearsay evidence, over the objection of the defendants, by testifying that one C. L. Spanggard indicated and pointed out survey stakes and corners of the claim and told him certain things with reference thereto.

12.

That the Court erred in permitting the plaintiff, during the trial, to amend its complaint by interlineation, changing the description of its alleged placer claim.

13.

That the Court erred in permitting Plaintiff's Exhibit "A" to be received in evidence over the objection of the defendants.

14.

That the Court erred in sustaining the objection of plaintiff to the following question propounded by the defendants, to the witness Arthur Gibson, on cross-examination:

"Q. Now, did you ever make any other map or blue-print of the ground in controversy than the map that is upon the wall here, Exhibit 'A'?"

Mr. COCHRAN.—Objected to as not proper cross-examination.

The COURT.—Objection sustained."

Exception allowed.

15.

That the Court erred in sustaining the plaintiff's objection to the following question propounded to

the witness, Arthur Gibson, on cross-examination:
[149]

“Q. And tell me if it was not a fact that Bob Lyng and Moonlight claim on the exhibit is identical with the Bob Lyng or Moonlight on this one that I hand you?

Mr. SCHOFIELD.—Objected to as incompetent and immaterial.

The COURT.—You have gone far enough. Objection sustained.”

Exception allowed.

16.

That the Court erred in refusing to admit in evidence Defendants' Exhibit 8 for identification.

17.

That the Court erred in refusing to receive in evidence Defendants' Exhibit No. 12 for identification.

18.

That the Court erred in sustaining the plaintiff's objection to the following questions propounded to the witness A. G. Kingsbury, by defendants:

“Q. And during the year 1901 that you have just detailed, the year that you built the mounds and amended the location, state whether or not any person was in the physical possession or claimed the physical possession of any of the ground claimed as marked on the ground.

Mr. COCHRAN.—Objected to as calling for a conclusion of law.

The COURT.—Objection sustained.”

Exception allowed.

“Q. Were there any stakes, mounds or monu-

ments of any character whatever, within the exterior boundaries of [150] the Grant claim indicating that anybody claimed it?

Mr. COCHRAN.—Objected to as leading.

The COURT.—Objection sustained.”

Exception allowed.

19.

That the Court erred in sustaining the plaintiff's objection to the following question propounded to the witness Robert Lyng:

“Q. Now, from the time that you located in 1899 up to the time in 1901 or 2, whatever time you sold to the Pioneer Mining Company, did anyone ever make any claim of any kind or character to your claim or any portion other than this claim made by Jensen to the overlap of No. 6 Good Luck?

Mr. COCHRAN.—Objected to as wholly irrelevant and immaterial.

The COURT.—Objection sustained.”

Exception allowed.

20.

That the Court erred in denying the defendants' offer to prove by the witness, Robert Lyng, that no claim was ever made by the Pioneer Mining Company or its predecessors, to any portion of the Bob Lyng or Moonlight claim at any time, as follows:

“Mr. GILMORE.—I offer to show by the answer of witness, that he answered in substance that no one made any claim whatever to it, thereby including the Pioneer Mining Company or any of its officials or its predecessors.

Mr. COCHRAN.—Objected to as wholly irrelevant and immaterial. [151]

The COURT.—Objection sustained.”
Exception allowed.

21.

That the Court erred in sustaining the objections of the plaintiff to the following questions propounded to the witness, Robert Lyng, by the defendants:

“Q. Did anyone ever assert that they had a claim conflicting with yours up to the time you sold?

Mr. COCHRAN.—Objected to as being wholly irrelevant and immaterial.

The COURT.—Objection sustained.”
Exception allowed.

“Q. Did anyone make the assertion to you that they conflicted with you in any way?

Mr. COCHRAN.—Objected to as wholly irrelevant and immaterial.

The COURT.—Objection sustained.”
Exception allowed.

22.

That the Court erred in sustaining the objection to the question propounded to the witness Ethel Luella Howard, as follows:

“Q. State whether or not the Pioneer Mining Company or Andrew Jensen, or D. W. McKay or anyone on their behalf, made any claim whatsoever, to any part of the ground embraced within the Grant claim during the time you had charge of it?

Mr. COCHRAN.—I object to the question,

being wholly irrelevant and immaterial.

The COURT.—Objection sustained.”

Exception allowed. [152]

23.

That the Court erred in sustaining the plaintiff's objection to the following question propounded to the witness Adolph Meyer:

“Q. State whether or not the wash at the bottom of the hole indicated a channel?

Mr. COCHRAN.—Objected to as incompetent and irrelevant.

The COURT.—Objection sustained.”

Exception allowed.

24.

That the Court erred in not admitting in evidence Defendants' Exhibit 41 for Identification.

25.

That the Court erred in not admitting in evidence Defendants' Exhibit 42 for Identification.

26.

That the Court erred in not admitting in evidence Defendants' Exhibit 43 for Identification.

27.

That the Court erred in not admitting in evidence Defendants' Exhibit 49 for Identification.

28.

That the Court erred in not permitting the witness, J. W. Charles, to testify in accordance with offer of the defendants, that he was an employee of the defendant McCumber and in the possession and working the ground in controversy between the months of May and July, 1911. [153]

29.

That the Court erred in sustaining the plaintiff's objection to the following question propounded to the witness, S. J. Bakke:

“Q. Where does the Moonlight Water Company keep its office or maintain its office in the Town of Nome?

Mr. COCHRAN.—Objected to as wholly irrelevant and immaterial.

The COURT.—Objection sustained.

Exception allowed.

30.

That the Court erred in denying and refusing the defendants' offer to prove by the witness S. J. Bakke, as follows:

“Mr. GILMORE.—I now offer to prove by the witness that ever since the year 1906, since the Moonlight Water Company was organized it had maintained its office with the Pioneer Mining Company and has been managed directly by Mr. Lindeberg, the president of the Pioneer Mining Company, through the witness as manager. I offer it for the purpose of showing that during the time of the litigation, which the plaintiff in its reply admit took place, that the Pioneer Mining Company stood by during all those years and did not assert title to the ground in controversy that was then being litigated.

The COURT.—Offer denied.”

Exception allowed.

31.

That the Court erred in not admitting in evidence

Defendants' [154] Exhibit 50 for Identification.
32.

That the Court erred in not admitting in evidence Defendants' Exhibit 51 for Identification, being a pencil sketch or map drawn by the witness, Andrew Jensen, plaintiff's locator and grantor.

33.

That the Court erred in not permitting the witness, Tom D. Jensen, to testify that he had an interest in placer claim No. 1 Bench Moonlight, the placer claim claimed by the plaintiff in this action.

34.

That the Court erred in refusing and denying the defendants' offer to prove by the witness, Tom D. Jensen as follows:

"Mr. GILMORE.—I now offer to prove by the answers to the different questions just offered and ruled out, in substance: That the witness stated he had a half interest in the claim; that he got it from his father under an arrangement with his father, the title to stand in his father's name but his father executed a power of attorney to him so he could convey it to whomsoever he pleased.

Mr. SCHOFIELD.—Objected to as not the best evidence.

The COURT.—Objection sustained."

Exception allowed. [155]

35.

That the Court erred in sustaining the plaintiff's objection to the following question propounded to the witness Tom D. Jensen:

“Q. Now, you never at any time you were an owner of the claim claimed that it conflicted with the Grant claim?

Mr. COCHRAN.—Objected to as wholly irrelevant and immaterial.

The COURT.—Objection sustained.”
Exception allowed.

36.

That the Court erred in not admitting in evidence Defendants' Exhibit 53 for Identification.

37.

That the Court erred in not admitting in evidence Defendants' Exhibit 54 for Identification.

38.

That the Court erred in not admitting in evidence Defendants' Exhibit 55 for Identification.

39.

That the Court erred in not admitting in evidence Defendants' Exhibit 56 for Identification.

40.

That the Court erred in not admitting in evidence Defendants' Exhibit 57 for Identification.

41.

That the Court erred in not admitting in evidence [156] Defendants' Exhibit 58 for Identification.

42.

That the Court erred in not admitting in evidence Defendants' Exhibit 59 for Identification.

43.

That the Court erred in not admitting in evidence Defendants' Exhibit 60 for Identification.

44.

That the Court erred in not admitting in evidence Defendants' Exhibit 61 for Identification.

44

That the Court erred in not admitting in evidence Defendants' Exhibit 62 for Identification.

45.

That the Court erred in not admitting in evidence Defendants' Exhibit 62 for Identification.

46.

That the Court erred in not admitting in evidence Defendants' Exhibit 63 for Identification.

47.

That the Court erred in not admitting in evidence Defendants' Exhibit 64 for Identification.

48.

That the Court erred in sustaining plaintiff's objection to the following question propounded to the defendant [157] M. D. McCumber:

“Q. Is anyone living on the ground in controversy to-day?

Mr. COCHRAN.—Objected to as wholly irrelevant and immaterial.

The COURT.—Objection sustained.”

Exception allowed.

49.

That the Court erred in refusing and denying the defendants' offer to prove by the witness M. D. McCumber, that the defendants were in the possession of the ground in controversy, as follows:

“Mr. GILMORE.—I offer to show by the witness that the witness Adolph Meyer was repre-

senting this defendant on the ground until the first day of May, 1911; that he was succeeded by J. W. Charles who lived in the red cabin on the ground in controversy until the 7th day of July, whereupon he was succeeded by Captain George Smith, who has ever since the 7th day of July, and up until the present time, and now is, living on the ground in controversy. All this evidence offered for the purpose of showing our continued possession since, at the time, and prior to the institution of this suit; and during that time we have carried on mining operations within the ground in controversy.

Mr. COCHRAN.—We object to the offer on the ground that it is wholly immaterial.

The COURT.—Objection sustained.”

Exception allowed. [158]

50.

That the Court erred in sustaining the plaintiff's objection to the following question propounded to the witness, M. D. McCumber:

“Q. Please state to the Court whether or not the Pioneer Mining Company ever, through any of its agents, attempted to buy your title to the ground in controversy, prior to the institution of this suit.

Mr. SCHOFIELD.—Objected to as immaterial.

The COURT.—Objection sustained.”

Exception allowed.

51.

That the Court erred in overruling and denying

the defendants' offer to prove by the witness, M. D. McCumber, that the Pioneer Mining Company attempted to buy the ground in controversy as follows:

"Mr. GILMORE.—I offer to show by the witness that the Pioneer Mining Company attempted to buy the defendant's title to the ground in controversy prior to the 7th day of November, 1910, the date upon which this suit was instituted, thereby recognizing the defendant's title to the ground in controversy.

Mr. COCHRAN.—We object to the offer as irrelevant and immaterial.

The COURT.—Objection sustained."

Exception allowed.

52.

That the Court erred in overruling the defendants' objection [159] to the following question propounded to the witness, J. Allison Bruner:

"Q. State whether or not a corporation known as the Corwin Trading Co. has ever filed any articles of incorporation in the office of the clerk of the District Court, for the District of Alaska, or copies of articles of incorporation.

Mr. GILMORE.—Objected to, if the Court please, as wholly incompetent and immaterial.

The COURT.—Objection overruled."

Exception was allowed.

53.

That the Court erred in permitting the plaintiff to show the witness, J. Allison Bruner, that the defendant Pacific Coal & Transportation Company and its predecessor, the Corwin Trading Company, had

not filed articles of incorporation or designated a statutory agent.

54.

That the Court erred in admitting in evidence the Plaintiff's Exhibits "N," "O," "P," "Q" and "R."

55.

That the Court erred in overruling and denying the defendants' objections and exceptions to plaintiff's proposed findings of fact and conclusions of law, and the whole thereof.

56.

That the Court erred in refusing, overruling and denying the defendants' proposed findings of fact and conclusions of law, tendered to the Court. [160]

57.

That the Court erred in refusing to sign and file as findings of the Court, the defendants' proposed findings of fact and conclusions of law.

58.

That the Court erred in signing and filing the plaintiff's proposed findings of fact and conclusions of law over the objections and exceptions of the defendants.

59.

That the Court erred in finding that the plaintiff was in the possession of the ground in controversy at the time it instituted the above-entitled action.

60.

That the Court erred in finding that the defendants were not in possession of the ground in controversy at the time the above-entitled action was commenced.

61.

That the Court erred in making, signing and filing its finding of fact No. IV, for the reason that the same is not supported by the evidence.

62.

That the Court erred in making, signing and filing its finding of fact No. V, for the reason that the same is not supported by the evidence.

63.

That the Court erred in making, signing and filing its finding of fact No. VI, for the reason that the same is contrary to the weight of the evidence and against the evidence, [161] said finding being as follows:

“That the plaintiff, Pioneer Mining Company, was, on the 7th day of November, 1910, the date of the commencement of this action, and for a long time prior thereto had been, in the actual occupancy and exclusive possession of the whole of said mining claim, and that the defendants were not, nor were either of them, in possession of any portion of said mining claim on the said 7th day of November, 1910, nor had they or either of them been in the occupation or possession of any part of said mining claim for a long time prior thereto.”

64.

That the Court erred in making its finding of fact No. VII, for the reason that the said finding is not supported by the evidence.

65.

That the Court erred in making, signing and filing

its finding of fact No. VIII, for the reason that the same is not supported by the evidence.

66.

That the Court erred in making, signing and filing its finding of fact No. IX, for the reason that the same is not supported by the evidence.

67.

That the Court erred in making, signing and filing its finding of fact No. X for the reason that the same is not supported by the evidence.

68.

That the Court erred in making, signing and filing [162] its finding of fact No. XI, for the reason that the same is not supported by the evidence.

69.

That the Court erred in making, signing and filing its finding of fact No. XII, for the reason that the same is not supported by the evidence.

70.

That the Court erred in making, signing and filing its finding of fact No. XIII, for the reason that the same is not supported by the evidence.

71.

That the Court erred in making, signing and filing its finding of fact No. XIV, for the reason that the same is not supported by the evidence.

72.

That the Court erred in making, signing and filing its finding of fact No. XV, for the reason that the same is not supported by the evidence.

73.

That the Court erred in making, signing and filing

its finding of fact No. XVI, for the reason that the same is not supported by the evidence.

74.

That the Court erred in making, signing and filing its finding of fact No. XVII, for the reason that the same is not supported by the evidence. [163]

75.

That the Court erred in making, signing and filing its finding of fact No. XVIII, for the reason that the same is not supported by the evidence.

76.

That the court erred in overruling and denying the defendant's motion for a new trial.

77.

That the Court erred in making, signing and filing its final decree in favor of the plaintiff and against the defendants over the objection and exception of the defendants.

78.

That the Court erred in not dismissing this action for want of jurisdiction.

79.

That the Court erred in assuming and taking jurisdiction and deciding this cause on its merits.

WHEREFORE, said defendants pray that the said judgment of said District Court for the District of Alaska, Second Division, be reversed and set aside.

ELWOOD BRUNER,

Attorney for Defendant Pacific Coal & Transportation Company.

WILLIAM A. GILMORE,

Attorney for Defendant M. D. McCumber.

Due service of the within Assignment of Errors is hereby acknowledged, at Nome, Alaska, by receipt of copy, this 14th day of May, 1912.

G. J. LOMEN,

Of Attorneys for Plaintiff. [164]

[Endorsed]: No. 2245. In the District Court for the District of Alaska, Second Division. Pioneer Mining Company, a Corporation, Plaintiff, vs. Pacific Coal & Transportation Co. et al., Defendants. Assignment of Errors. Filed in the office of the Clerk of the District Court of Alaska, Second Division, at Nome. May 14, 1912. John Sundback, Clerk. By J. Allison Bruner, Deputy. Elwood Bruner and William A. Gilmore, Attorney at Law, Nome, Alaska, Attorney for Defendants. [165]

*In the District Court for the District of Alaska,
Second Division.*

No. 2245.

PIONEER MINING COMPANY, a Corporation,
Defendant,

vs.

THE PACIFIC COAL & TRANSPORTATION
COMPANY, a Corporation, M. D. Mc-
CUMBER, JOHN DOE and RICHARD ROE,
Defendants.

Petition for an Order Allowing Appeal.

Come now the defendants, Pacific Coal & Transportation Company and M. D. McCumber, and feeling themselves aggrieved by the final judgment and

decree made and entered in the above-entitled cause on the 20th day of April, 1912, in favor of the plaintiff and against the defendants, do hereby appeal from said final judgment and decree and from the whole and every part thereof, to the United States Circuit Court of Appeals for the Ninth Circuit, and they pray that this their appeal may be allowed; and that a transcript of the record and proceedings upon which the said judgment and decree was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit, and that said appellants further pray for an order fixing the amount of a cost and supersedeas bond to be given by said appellants upon said appeal, and upon the giving of said supersedeas bond the execution of said judgment and further proceedings in this court, in this action, be superseded and stayed.

Dated at Nome, Alaska, this 14th day of May, A. D. 1912.

ELWOOD BRUNER,

Attorney for Defendant P. C. & T. Co.

And WILLIAM A. GILMORE,

Attorney for Defendant M. D. McCumber. [166]

Service of the above and foregoing petition for an order allowing an appeal acknowledged by receipt of a copy this 14th day of May, 1912.

G. J. LOMEN,

Of Attorneys for Plaintiff.

[Endorsed]: No. 2245. In the District Court for the District of Alaska, Second Division. Pioneer Mining Company, a Corporation, Plaintiff, vs. Pa-

cific Coal & Transportation Company et al., Defendants. Petition for an Order Allowing Appeal. Filed in the office of the Clerk of the District Court of Alaska, Second Division, at Nome. May 14, 1912. John Sundback, Clerk. By J. Allison Bruner, Deputy. Elwood Bruner and William A. Gilmore, Attorneys at Law, Nome, Alaska, Attorneys for Defendants. [167]

*In the District Court for the District of Alaska,
Second Division.*

No. 2245.

PIONEER MINING COMPANY, a Corporation,
Plaintiff,

vs.

THE PACIFIC COAL & TRANSPORTATION
COMPANY, a Corporation, M. D. Mc-
CUMBER, JOHN DOE and RICHARD ROE,
Defendants.

**Order Allowing Appeal [and Fixing Amount of
Supersedeas Bond].**

Upon motion of Elwood Bruner, Esq., counsel for defendant, Pacific Coal & Transportation Company, and William A. Gilmore, Esq., counsel for defendant, M. D. McCumber,

IT IS ORDERED, that an appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the final judgment and decree heretofore filed and entered herein on the 20th day of April, 1912, be, and is hereby allowed, and that a certified transcript of the records, testimony, exhibits, stipu-

lations, motions, orders and all proceedings herein, be forthwith transmitted to the said United States Circuit Court of Appeals for the Ninth Circuit; and it is further ordered that a bond be given by the defendants to the plaintiff in the sum of Five Hundred Dollars (\$500.00), which bond shall operate as a supersedeas.

Done in open court this 14th day of May, A. D. 1912.

CORNELIUS D. MURANE,
District Judge.

Service of the above order admitted by receipt of copy this 14th day of May, 1912.

G. J. LOMEN,
Of Attys. for Plf.

[Endorsed]: No. 2245. In the District Court for the District of Alaska, Second Division. Pioneer Mining Company, a corporation, Plaintiff, vs. Pacific Coal & Transportation Company et al., Defendants. Order Allowing Appeal. Filed in the office of the Clerk of the District Court of Alaska, Second Division, at Nome. May 14, 1912. John Sundback, Clerk. By J. Allison Bruner, Deputy. Elwood Bruner and William A. Gilmore, Attorneys at Law, Nome, Alaska, Attorneys for Defendants. Vol. 9, Orders and Judgments, p. 392. [168]

*In the District Court for the District of Alaska,
Second Division.*

No. 2245.

PIONEER MINING COMPANY, a Corporation,
Plaintiff,

vs.

THE PACIFIC COAL & TRANSPORTATION
COMPANY, a Corporation, M. D. Mc-
CUMBER, JOHN DOE and RICHARD ROE,
Defendants.

Undertaking and Order.

KNOW ALL MEN BY THESE PRESENTS:
That we, the Pacific Coal & Transportation Com-
pany, a corporation, and M. D. McCumber, as prin-
cipals, and Fred A. Daniels and John F. Smith as
sureties, are held and firmly bound unto the plain-
tiff the Pioneer Mining Company, a corporation,
above named, in the sum of Five Hundred Dollars
(\$500.00), to be paid to the said plaintiff, Pioneer
Mining Company, a corporation, its successors or
assigns, to the payment of which well and truly to
be made we bind ourselves and each of us, jointly
and severally, and our and each of our heirs, execu-
tors, administrators and assigns, firmly by these
presents.

Sealed with our seals and dated this 14th day of
May, A. D. 1912.

The condition of the above undertaking and ob-
ligation is that,

WHEREAS, the above-named defendants, Pacific
Coal & Transportation Company, a corporation, and

M. D. McCumber, have filed their petition for an appeal, and have taken an appeal in the above-entitled cause to the United States Circuit Court of Appeals for the Ninth Circuit to reverse the judgment and decree in the above-entitled cause, rendered by the United States District Court for the District of Alaska, Second Division, and [169]

WHEREAS, the said defendants desire to secure the plaintiff in the payment of its costs, and its costs on appeal, and desire to have execution of said judgment and all other proceedings in said action superseded and stayed pending the final determination of said action on appeal;

NOW, THEREFORE, if the above-named defendants, Pacific Coal & Transportation Company, a corporation, and M. D. McCumber, shall prosecute the said writ to effect and answer all costs and damages, if they fail to make good their plea, and shall pay or cause to be paid to the said plaintiff, its successors and assigns, all damages which it shall suffer by reason of such *supersedeas* and stay of execution, if the same should be wrongful and without sufficient cause, then this obligation shall be void; otherwise to remain in full force and effect.

PACIFIC COAL & TRANSPORTATION
COMPANY,

By J. ALLISON BRUNER,

Attorney in Fact,

M. D. McCUMBER,

Principals.

FRED A. DANIELS,

JOHN F. SMITH,

Sureties. [170]

United States of America,
District of Alaska,—ss.

Fred A. Daniels and John F. Smith, being first duly sworn, each for himself, deposes and says: I am one of the sureties named in the above undertaking and am a resident of the District of Alaska; that I am not an attorney at law, marshal, deputy marshal, clerk of any court or other officer of any court, and am worth the sum of Five Hundred Dollars (\$500.00), in property exempt from execution, over and above all just debts and liabilities.

FRED A. DANIELS.

JOHN F. SMITH.

Subscribed and sworn to before me this 14th day of May, 1912.

[Notarial Seal] WILLIAM A. GILMORE,
Notary Public in and for the District of Alaska.

Order [Approving Supersedeas Bond].

The above and foregoing Supersedeas and Cost Bond is hereby approved this 14th day of May, 1912, and execution and all further proceedings in said action are superseded and stayed pending the final determination of this action.

CORNELIUS D. MURANE,
District Judge,

Rec'd copy May 14th, 1912.

G. J. LOMEN,
Of Attys. for Plf.

[Endorsed]: No. 2245. In the District Court for the District of Alaska, Second Division. Pioneer Mining Co., a Corporation, Plaintiff, vs. Pacific Coal

& Transportation Co. et al., Defendants. Undertaking. Filed in the office of the Clerk of the District Court of Alaska, Second Division, at Nome. May 14, 1912. John Sundback, Clerk. By J. Allison Bruner, Deputy. Elwood Bruner and William A. Gilmore, Attorneys at Law, Nome, Alaska, Attorneys for Defendants. [171]

*In the District Court for the District of Alaska,
Second Division.*

No. 2245.

PIONEER MINING COMPANY, a Corporation,
Plaintiff,

vs.

THE PACIFIC COAL & TRANSPORTATION
COMPANY, a Corporation, M. D. McCUM-
BER, JOHN DOE and RICHARD ROE,
Defendants.

Order Designating Place of Trial.

Upon application of Elwood Bruner, Esq., attorney for defendant Pacific Coal & Transportation Company, and William A. Gilmore, Esq., attorney for defendant M. D. McCumber, and for good cause shown,

IT IS ORDERED that this cause be heard on appeal in the United States Circuit Court of Appeals for the Ninth Circuit, at the city of Seattle, in the State of Washington, which said place for the said hearing of said appeal, is by this order hereby fixed and determined.

Done in open court this 14th day of May, A. D.
1912.

CORNELIUS D. MURANE,

District Judge.

Rec'd copy May 14th, 1912.

G. J. LOMEN,

Of Attys. for Plf.

[Endorsed]: No. 2245. In the District Court for the District of Alaska, Second Division. Pioneer Mining Company, a Corporation, Plaintiff, vs. Pacific Coal & Transportation Co. et al., Defendants. Order Designating Place of Trial. Filed in the office of the Clerk of the District Court of Alaska, Second Division, at Nome. May 14, 1912. John Sundback, Clerk. By Allison Bruner, Deputy. Elwood Bruner and William A. Gilmore, Attorneys at Law, Nome, Alaska, Attorneys for Defendants. Vol. 9, Orders and Judgments, p. 394. [172]

*In the District Court for the District of Alaska,
Second Division.*

No. 2245.

PIONEER MINING COMPANY, a Corporation,
Plaintiff,

vs.

THE PACIFIC COAL & TRANSPORTATION
COMPANY, a Corporation, M. D. McCUM-
BER, JOHN DOE and RICHARD ROE,
Defendants.

Order Enlarging Time to File Record.

On motion of Elwood Bruner, Esq., attorney for the defendant Pacific Coal & Transportation Company, and William A. Gilmore, Esq., attorney for defendant M. D. McCumber, and good cause appearing to the court therefor;

IT IS NOW HEREBY ORDERED that the time for filing and docketing the transcript and record in the above-entitled cause, in the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, is hereby extended to and until the first day of September, 1912.

Done in open court this 14th day of May, A. D. 1912.

CORNELIUS D. MURANE,
District Judge.

Rec'd copy May 14th, 1912.

G. J. LOMEN,
Of Attys. for Plf.

[Endorsed]: No. 2245. In the District Court for the District of Alaska, Second Division. Pioneer Mining Company, a Corporation, Plaintiff, vs. Pacific Coal & Transportation Co. et al., Defendants. Order Enlarging Time to File Record. Filed in the office of the Clerk of the District Court of Alaska, Second Division, at Nome. May 14, 1912. John Sundback, Clerk. By J. Allison Bruner, Deputy. Elwood Bruner and William A. Gilmore, Attorneys at Law, Nome, Alaska, Attorneys for Defendants. Vol. 9, Orders and Judgments, p. 393. [173]

*In the District Court for the District of Alaska,
Second Division.*

Cause No. 2245.

PIONEER MINING COMPANY, a Corporation,
Plaintiff,

vs.

THE PACIFIC COAL & TRANSPORTATION
COMPANY, a Corporation, et al.,
Defendants.

Praecipe [for Transcript on Appeal].

To the Clerk of the Above-entitled Court:

You will please prepare transcript on appeal in the above cause, containing Complaint, Demurrer, Minute Order Overruling Demurrer, Amended Answer of Pacific Coal and Transportation Company, Amended Answer of M. D. McCumber, Reply to Amended Answer of Pacific Coal and Transportation Company, Reply to Amended Answer of M. D. McCumber, Opinion of Court (May 27, 1911), Opinion of Court (February 5, 1912), Motion for New Trial, Minute Order Overruling Motion for New Trial, Bill of Exceptions No. 1, Bill of Exceptions No. 2, Bill of Exceptions No. 3, Court Minutes of May 20, 1911, May 27, 1911, June 17, 1911, October 26, 1911, November 4, 1911, November 6, 1911 and April 20, 1912, and Appeal Papers.

ELWOOD BRUNER,

Attorney for Defendant Pacific Coal and Transportation Company.

WM. A. GILMORE,

By ELWOOD BRUNER,

Attorney for Defendant M. D. McCumber.

[Endorsed]: No. 2245. In the District Court for the District of Alaska, Second Division. Pioneer Mining Company, a Corporation, Plaintiff, vs. Pacific Coal and Transportation Company, a Corporation, et al., Defendants. Praecipe for Transcript on Appeal. Filed in the office of the Clerk of the District Court of Alaska, Second Division, at Nome. May 20, 1912. John Sundback, Clerk. By J. A. B., Deputy. [174]

*In the District Court for the District of Alaska,
Second Division.*

No. 2245.

THE PIONEER MINING COMPANY, a Corporation,
Plaintiff,

Plaintiff,

vs.

THE PACIFIC COAL & TRANSPORTATION
COMPANY, a Corporation, M. D. McCUM-
BER, JOHN DOE and RICHARD ROE,
Defendants.

Clerk's Certificate to Transcript of Record.

I, John Sundback, Clerk of the District Court of Alaska, Second Division, do hereby certify that the foregoing typewritten pages, from 1 to 174, both inclusive, are a true and exact transcript of the Complaint, Demurrer, Court Minutes of March 4, 1911 and of May 20, 1911, Opinion of Court filed May 27, 1911, Court Minutes of May 27, 1911, of June 17, 1911, of October 26, 1911, of October 27, 1911, of No-

vember 4, 1911 and November 6, 1911, Amended Answer of Defendant Pacific Coal & Transportation Company Amended Answer of Defendant M. D. McCumber, Reply to Amended Answer of Pacific Coal & Transportation Company, Reply to Amended Answer of M. D. McCumber, Opinion of Court filed February 5, 1912, Defendants' Bill of Exceptions No. 1, Defendants' Bill of Exceptions No. 2, Motion for New Trial, Court Minutes of April 20, 1912, Assignment of Errors, Petition for an Order Allowing Appeal, Order Allowing Appeal, Undertaking and Order, Order Designating Place of Trial, Order Enlarging Time to File Record and Praecipe for Transcript on Appeal, in the case of The Pioneer Mining Company, a corporation, plaintiff, vs. The Pacific Coal & Transportation Company, a corporation, et al., defendants, No. 2245, this court, and of the whole thereof, as appears from the records and files in my office at Nome, Alaska; and further certify that the original Bill of Exceptions No. 3 in the above-entitled cause is included in said transcript as a part thereof, the original Bill of Exceptions being transmitted by stipulation of the [175] attorneys for the respective parties, and upon order of the Court; and further certify that the original Citation in the above-entitled cause is attached to this transcript.

Cost of transcript \$220.85, paid by Wm. A. Gilmore, of attorneys for defendants.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court this 12th

day of June, A. D. 1912.

[Seal]

J. SUNDBACK,
Clerk. [176]

*In the District Court for the District of Alaska,
Second Division.*

No. 2245.

PIONEER MINING COMPANY, a Corporation,
Plaintiff,

vs.

THE PACIFIC COAL & TRANSPORTATION
COMPANY, a Corporation, M. D. McCUM-
BER, JOHN DOE and RICHARD ROE,
Defendants.

Citation.

United States of America,
District of Alaska,—ss.

The President of the United States of America, to
the Pioneer Mining Company, a Corporation,
Plaintiff, Greeting:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit, to be held at the city of San Francisco, in the State of California, within thirty (30) days from the date of this Citation, on the 13th day of June, A. D. 1912, pursuant to an order allowing appeal entered in the office of the clerk of the United States District Court, District of Alaska, Second Division, from the final decree and judgment

filed and entered therein on the 20th day of April, 1912, in that certain suit wherein you, the said Pioneer Mining Company, a corporation, is plaintiff, and the Pacific Coal & Transportation Company, a corporation, and M. D. McCumber are defendants, to show cause, if any there be, why the said final decree and judgment rendered against said defendants as in said order allowing appeal mentioned, [177] should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable EDWARD D. WHITE, Chief Justice of the Supreme Court of the United States of America, this 14th day of May, A. D. 1912, and of the Independence of the United States the one hundred and thirty-sixth.

CORNELIUS D. MURANE,

District Judge.

Attest my hand and seal of the United States District Court for the District of Alaska, Second Division, at the Clerk's office at Nome, Alaska, this 14th day of May, A. D. 1912.

[Seal]

J. SUNDBACK,

Clerk of the United States District Court, for the District of Alaska, Second Division.

By J. Allison Bruner,

Deputy.

Service of the above and foregoing Citation acknowledged by receipt of copy this 14th day of May, 1912.

G. J. LOMEN,

Of Attorneys for Plaintiff. [178]

[Endorsed]: No. 2245. In the District Court for the District of Alaska, Second Division. Pioneer Mining Company, a Corporation, Plaintiff, vs. Pacific Coal & Transportation Company et al., Defendants. Citation. Filed in the office of the Clerk of the District Court of Alaska, Second Division, at Nome. May 14, 1912. John Sundback, Clerk. By J. Allison Bruner, Deputy.

PIONEER MINING CO.,

Plaintiff,

vs.

PACIFIC COAL & TRANSPORTATION CO.
et al.,

Defendants.

Proposed Bill of Exceptions No. 3.

Filed in the office of the Clerk of the District Court of Alaska, Second Division, at Nome. May 2, 1912. John Sundback, Clerk. By J. Allison Bruner, Deputy.

Refiled in the office of the Clerk of the District Court of Alaska, Second Division, at Nome. May 14, 1912. John Sundback, Clerk. By J. Allison Bruner, Deputy. Vol. 9, Orders and Judgments, p. 391.
[1]

*In the District Court for the District of Alaska,
Second Division.*

No. 2,245.

PIONEER MINING COMPANY, a Corporation,
Plaintiff,

vs.

THE PACIFIC COAL & TRANSPORTATION
COMPANY, a Corporation, M. D. McCUM-
BER, JOHN DOE and RICHARD ROE,
Defendants.

Proposed Bill of Exceptions No. 3.

BE IT REMEMBERED that on the 13th day of November, A. D. 1911, the above-entitled cause came on for trial before the Honorable CORNELIUS D. MURANE, Judge of the said District Court, District of Alaska, Second Division, the plaintiff appearing by its attorneys, Messrs. O. D. Cochran, G. J. Lomen and George D. Schofield, and the defendants appearing by their attorneys, Messrs. Elwood Bruner and William A. Gilmore, and the following proceedings were had and testimony taken:

Testimony of Arthur Gibson, for Plaintiff.

ARTHUR GIBSON, a witness on behalf of plaintiff, being duly sworn, testified as follows:

Direct Examination.

My name is Arthur Gibson. I am a civil engineer and have been following such profession since 1889. I attended the technical institute at Stockholm, Sweden, for five years studying civil engineering, and

(Testimony of Arthur Gibson.)

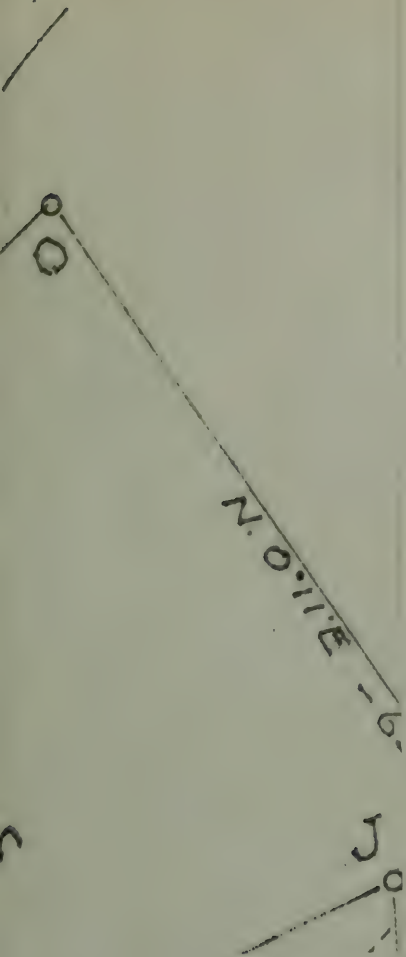
graduated as mechanical and civil engineer and architect. I am a surveyor and made the plat on the wall from actual surveys. It correctly represents [1½] various lines and objects as represented upon the plat from actual surveys.

Mr. COCHRAN.—I ask to have the map marked for identification.

Mr. GILMORE.—We reserve cross-examination until such time as they attempt to offer the map in evidence.

The COURT.—Very well.

(Map is marked Plaintiff's Exhibit "A" for identification. Said exhibit being as follows:) [2]



Mr. COCHRAN.—We offer the deposition of Andrew Jensen taken by the defendants in this case.

Mr. GILMORE.—If the Court please, the defendants make objection to the use of that deposition because they have had no opportunity whatever to cross-examine the witness. The exhibits upon which the witness testified were surreptitiously handed to the witness without cross-examination or a chance for cross-examination by the attorneys for defendants in this law suit, and a glance at the deposition by the Court will show that the witness testified almost from the first question to the last, with an exhibit before him which was surreptitiously handed to him back in North Dakota, without being exhibited to the defendants, and the witness interjected some remarks about the map in almost every answer he made, and for that reason the deposition is incompetent, irrelevant and immaterial.

The COURT.—The objection to the deposition is overruled. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

Deposition of Andrew Jensen, for Plaintiff.

My name is Andrew Jensen. I am 60 years of age. A [4] farmer and I live six miles south of Buf. Cass County, North Dakota. Have resided in this vicinity since 1879. I was in the Nome mining district in the winter of 1899 and 1900. I came out in the fall of 1900. I made some mining locations in the vicinity of Anvil Creek and Moonlight Creek

(Deposition of Andrew Jensen.)

during that time. I staked out No. 6 below Good Luck on Anvil Creek and also then I staked Bench No. 1 on Moonlight. The No. 6 Below Good Luck claim was made January 1st, 1899. I am pretty sure it was the first of January, either the first or second of January. There was a man by the name of Otto Schueler and C. L. Spanggard. I cannot say the size of this claim because it was fractional on account of striking the Moonlight claim. No. 1 Below joined it on the west that was Jafet Lindeberg's claim. Lyng's Moonlight claim was on the east. I recorded the location certificate in the Nome recorder's office within a week or two after I staked the claim. So far as I can remember, the instrument handed to me marked Exhibit "A" to this deposition, is a correct copy of the location notice that I recorded on the date given, the 17th of January, 1899. Otto Schueler and C. L. Spanggard were with me when I staked Bench No. 6 Good Luck. At the time I staked said placer claim No. 6 Good Luck, I knew the placer claim known as Moonlight claim, also called the Bob Lyng claim, and was familiar with its boundaries. My placer claim No. 6 Below Good Luck, when I staked it, did not in any way conflict with the exterior boundaries of the Lyng claim or Moonlight claim. I performed work and labor on Bench claim No. 6 Below Good Luck. Sometime in February I sunk a shaft on it to bedrock. I think I talked to Jafet Lindeberg. He talked to me several times. He came by while I was working on the claim and Otto Schueler also came up and talked to

(Deposition of Andrew Jensen.)

me while I was working there. The map Exhibit "C" (Plaintiff's Exhibit "B") is not a correct representation of the claims as I staked them. I know it is not therefore I cannot locate the position where I did work on that map. I sunk a shaft not very far from [5] the westerly line of the claim. I located the claim called Bench No. 1 Moonlight in the vicinity of the Moonlight Creek in the Cape Nome Mining District, either the second or third of January, 1899; it ran between Lyng's Moonlight claim on the west and Nelson's on the east, and runs up towards Anvil Mountain, not very far from the base of the mountain nearer to Anvil Mountain than Lyng's Moonlight claim. I filed a location certificate of said claim in the Cape Nome Mining and Recording District. I think there is a mistake in Exhibit "B" in saying that it is bounded on the east by Moonlight claim. This must have been made in the recorder's office or else we made a mistake when we wrote it out. I was not familiar with the placer claim known as No. 2 Moonlight, called Lindbloom's claim, at the time I staked Bench claim No. 1 Moonlight. My Bench claim No. 1 Moonlight joined the Bob Lyng or Moonlight claim on the east and extended along the easterly side of Robert Lyng's claim and further up towards Anvil Mountain than Lyng's claim, and it extended east from Lyng's claim towards the Nelson claim. At the time I was prospecting and staking in the vicinity of Moonlight Creek and Anvil Creek, I was familiar with the creek called Little Creek. As far as I remember my Bench

(Deposition of Andrew Jensen.)

No. 1 Moonlight did not extend lengthwise towards the said Little Creek. The west side of my Bench Claim No. 1 joined Lyng's claim as near as I remember; and extended northerly towards Anvil Mountain. I was acquainted with Otto Schueler and C. L. Spanggard at Anvil and Moonlight Creeks in January, 1899. They were present and assisted me in making the location. I did not know anything about the Lindbloom claim but my Bench No. 1 Moonlight joined the eastern side of the Moonlight claim. The west side of my claim run along the easterly side of Robert Lyng's claim. To a certain extent the Moonlight claim or Bob Lyng claim, lay [6] between my two claims, Bench claim No. 6 Below Good Luck and Bench No. 1 Moonlight, staked by me. At the time I staked my two claims, No. 6 Good Luck and No. 1 Bench Moonlight, their exterior boundaries as marked by me on the ground, did not in any way conflict with the Bob Lyng or Moonlight claim. Otto Schueler and C. L. Spanggard helped me mark the boundaries because we had quite a bit of trouble in locating the stake on the Moonlight claim and also on the Nelson claim. I performed labor and made improvements on Bench No. 1 Moonlight claim either in February or March, 1899. Otto Schueler was there several times and I am sure Lindeberg was there several times while I was working and he came by and walked over to his claim I think Dr. Kittlesen was there several times and they came walking by there occasionally. I made a discovery of gold on Bench No. 1 Moonlight. I

(Deposition of Andrew Jensen.)

found gold there at the time I staked it out. It was on the upper part of the claim in the willows. There was a place where it was not frozen much. I do not remember if Otto Schueler was present or not; I remember showing him gold.

I am acquainted with Jafet Lindeberg, the president of the Pioneer Mining Company, and I have known him since January, 1899; I met him up on Anvil Creek and he told me which way to stake No. 6 Good Luck on Anvil Creek. He advised me to run it up towards the mountain. I discussed the said claims with him on the claims and later in Nome and asked him if he would not buy No. 6 Good Luck on Anvil Creek. That was in the summer of 1899; I think I talked with Lindeberg while I was working within the boundaries of No. one Bench Moonlight.

Q. State whether or not you have discussed the position and location of said Bench No. 1 Moonlight with any person or persons on behalf of the plaintiff, Pioneer Mining [7] Company in this action, since this suit was instituted, November 7th, 1910, and if so whom and where?

A. I discussed it only with Mr. Holt in August, 1911. He came out to my farm.

I was acquainted with one W. N. Grant. I knew him quite well, we lived close together in Nome. I assisted him in locating the claim known as the Grant claim near Moonlight. I went over with him and showed him the two claims I had staked. I witnessed the location of his claim; the claim he staked at that

(Deposition of Andrew Jensen.)

time. I have examined Exhibit "D" to this deposition and I recall signing the original statement but cannot be positive about the wording. Grant just put in one willow stake right up by the side of one of mine on No. 6 Good Luck—on the upper part towards the mountain.

I used willow stakes about four or five feet long and two or three inches in circumference. I cut off one side with an ax and wrote with a lead pencil Bench No. 1 Moonlight on each corner stake, and on one of them I put the location notice by splitting it on top and putting the location notice in the split.

Q. The location certificate above referred to describes the said Grant claim as lying adjoining the east end of the Bob Lyng claim and running up towards Anvil Mountain. Please state whether or not the said Grant claim was staked and marked on the ground as joining the east end of the Bob Lyng or Moonlight claim.

A. As I remember it Grant's claim could not join Lyng's except possibly on one corner.

I don't know whether Grant made a discovery of gold within the exterior boundaries of his claim as marked on the ground or not. Of my own knowledge I do not know whether or [8] not he ever discovered any gold nor do I know that Grant ever performed any work upon his claim.

Q. According to the location certificate of Bench claim No. 1 Moonlight and the Grant claim, the said Grant claim was located six days after the location of Bench No. 1 Moonlight. Please state whether or

(Deposition of Andrew Jensen.)

not said Grant claim as located and marked on the ground at the time of its location, embraced within its exterior boundaries any of the ground as marked by you within the exterior boundaries of the Bench No. 1 Moonlight. A. It did not.

Q. State whether or not the placer claim located by W. N. Grant on the 9th day of January, 1899, in any way or manner whatever, conflicted with the exterior boundaries of the Lyng claim or Moonlight claim, or with Bench No. 1 Moonlight.

A. I know it could not conflict because Grant staked it with reference to the other claims and we could see the stakes of the other claims.

I recall fairly well the surface marks of the ground in the locality of Moonlight Springs, and fairly well recollect the surface conditions of that vicinity as it was represented in January, 1899. There was some flat ground between Grant's location stake and the base of the mountain—Anvil Mountain—but not a great deal. Then, it ran up the side of Anvil Mountain because I remember asking him why he wanted to stake the claim in that way, and he said there might be some gold up in the mountain. On January 9, 1899, when the Grant claim was staked it included a little flat ground between Grant's stake and the mountain—Anvil Mountain—not very much a couple of hundred feet possibly, I can't remember that. I [9] sold a half interest in my claim to a United States custom officer by the name of Hatch—that was in the winter of 1899, the other half was sold by my son. I don't know anything about it—

(Deposition of Andrew Jensen.)

I think he sold it—I am sure he did; I don't know when. He had my power of attorney. I don't know to whom my son sold the other half.

Q. Please state whether or not at all the times you were the owner of said Bench No. 1 Moonlight claim, you ever at any time claimed that the exterior boundaries of said Bench No. 1 Moonlight embraced or included any of the ground of the Bob Lyng or Moonlight claim, or the said Grant claim, as shown on Exhibit "C" to this deposition. A. I never did.

Q. Please carefully examine Exhibit "C," the plat attached to these interrogatories, and state whether or not placer claims Bench No. 6 Below Good Luck, the Grant claim, the Lyng or Moonlight claim, No. 2 Moonlight or Lindbloom claim and Bench No. 1 Moonlight, as shown on said map, approximately represent the relative and original positions of said claims as staked and marked on the ground at the time they were located.

A. They do not; not on that map. So far as I can see they are altogether wrong.

Cross-examination of ANDREW JENSEN, Offered
by Plaintiff.

Q. At or about the time you located the No. 1 Bench Moonlight, did anyone locate a claim immediately to the east of your said location, and if so, who?

A. They did not because the Nelson claim was located east of Bench No. 1 on Moonlight when I located that claim. [10]

My Bench No. 1 Moonlight joined Nelson's claim on the western side of the Nelson claim; they did not

(Deposition of Andrew Jensen.)

have any common corners; I don't believe they had any common corners. My upper stakes on Moonlight were higher up towards the mountain than any of those. I was not acquainted with Nelson who located the Nelson claim. Nelson's claim was east of mine or easterly, not just exactly east, but easterly. My claim joined his on the western side. I did not know Elizabeth Carlson. I don't know what claim she located in that vicinity. I don't think my Bench No. 1 Moonlight and the Bob Lyng or Moonlight claim had any common corners. My claim ran along the east side of his but further up towards Anvil Mountain—extended further up towards Anvil Mountain so they did not have any common corners. The Grant claim and my Bench No. 1 did not have any common corners. A part of the Grant claim might lie between the upper end of my Moonlight claim and the Anvil Mountain. Grant placed one middle stake at one of my corners towards Anvil Mountain on the upper side of No. 6 Good Luck. Otto Schueler located a claim on Little Creek or rather just above Little Creek and Spanggard east of Otto Schueler. I helped C. L. Spanggard to locate a claim right east of Otto Schueler on Little Creek; it did not have any common corners with the Nelson claim, it was further east. I could not say whether I knew a claim called Bench No. 1 first tier right limit of Little Creek or not. I witnessed Spanggard's location but I cannot remember. I was not acquainted with No. 2 Moonlight or the Lindbloom claim—my Bench No. 1 Moonlight had no common corner with the No. 2 Moonlight claim that I know

(Deposition of Andrew Jensen.)

of. At the time I located No. 1 Bench Moonlight, I marked the claim on the ground by putting a stake in each corner, there were four stakes; I would say about four or five feet long and two or three inches in circumference. They were willow stakes. They were marked with a lead [11] pencil. I squared one side of them with an ax and marked them Bench No. 1 on Moonlight and on one of them I put the location notice. I posted a location notice on one of the corner stakes by splitting it in the top and sticking a notice down. It was recorded in the recorder's office at Nome. I did find gold there when I was looking over the ground. I struck a piece of soft ground right close to some willows, and I dug down and took some dirt to the tent and washed it and found gold.

The discovery of gold that I found warranted me in further prospecting and developing said claim as a placer claim.

Q. Did you, subsequent to the location of Bench No. 1 Moonlight, reset the stakes or further mark the claim on the ground? A. I did not.

Q. If you signed the notice of location made by W. N. Grant as a witness to said location notice, when, where and under what circumstances did you sign the same?

A. Yes, I signed it right on the place where he put down the stakes when the location was made.

I asked him why he wanted to stake the claim up on the side of the mountain, and he said there might be gold up there. Grant was the only one present, I remember, still Otto Schueler might have been there. The conversation was had right on the place where

(Deposition of Andrew Jensen.)

we put down the stake. I did not know where the exterior boundaries of the Grant claim were because he only put down one stake; he said that was enough. I did not at any time abandon or intend to abandon, any part or portion of the No. 1 Moonlight.

Q. Did you at any time change the boundaries of said claim? (Bench No. 1 Moonlight.)

A. I never did. [12]

Q. Did the Grant claim at any time, to your knowledge, overlap the No. 1 Bench Moonlight, if so, state when you first discovered such overlap, and to what extent it overlapped?

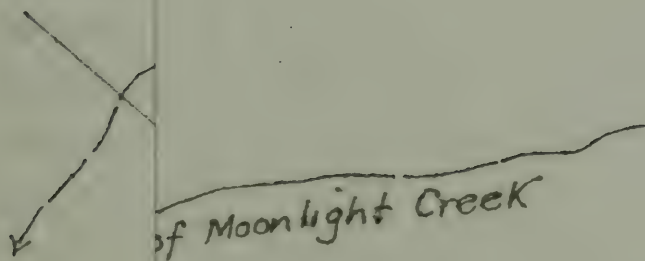
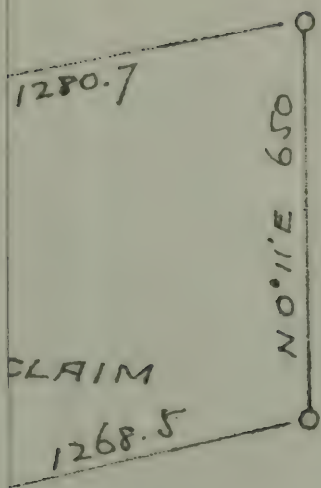
A. It did not to my knowledge. I never discovered it because I left in the fall of 1900.

Q. By whom and how was your attention first called to any conflict between the Grant claim and the No. 1 Bench Moonlight, and what, if anything, did you do about it?

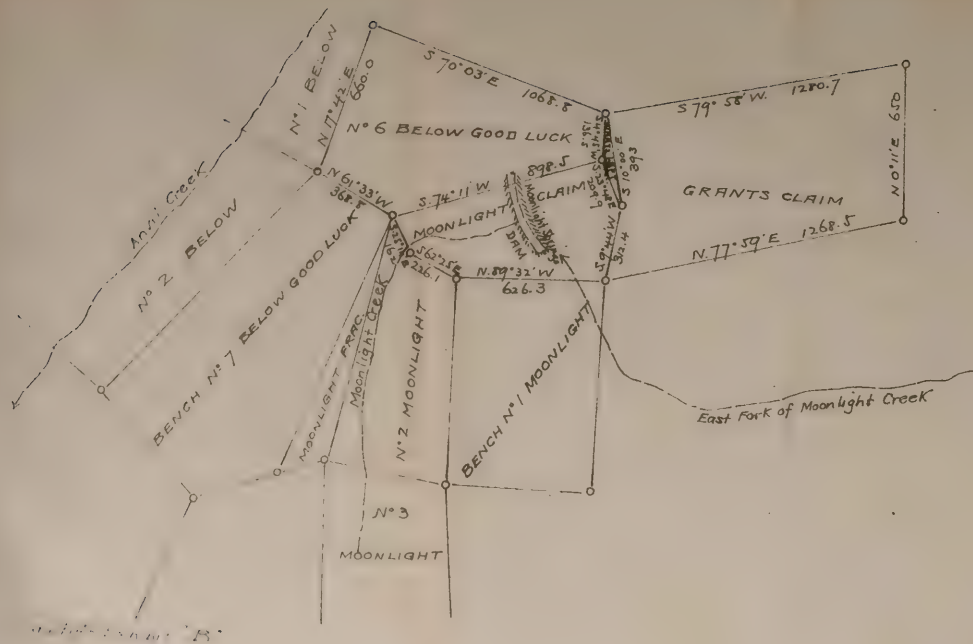
A. About five years ago a representative of an eastern company came to my place in Buffalo, N. D., with a map something like the one I have before me and wanted me to give him the location of the Grant claim as near as I remember it, and I told him all about it as near as I remembered it. I do not know who the man was. The first I ever heard of it was in a letter from my son Tom, he mentioned it was in litigation.

Mr. COCHRAN.—This is the original blue-print attached to the deposition of Andrew Jensen which we now offer in evidence. He has testified in relation to the same.

The COURT.—Yes; let it be marked Plaintiff's Exhibit "B." (Said exhibit being as follows:) [13]



Plaint



(Deposition of Andrew Jensen.)

(Witness continuing:) I meant by my location notice it was bounded to the N. W. by Lyng's Moonlight claim and on the east by Nelson's claim. I think there must have been a mistake in the notice or else by the recorder in copying.

If this copy is correct, I think there must have been a mistake in describing the claim which bordered it on the east. It should have read bordered on the east by Nelson's claim. The location does bear the true date of the location of Bench No. 1 Moonlight. I last saw the stakes in the summer of 1900; I saw the two upper stakes on my Moonlight claim, I am positive about that. The northwestern corner stake was some north of the Moonlight claim, or northerly I would say, about on a line with the east side of Lyng's Moonlight claim. The northeast corner stake was a little north of the Nelson claim—northwest and about on a line with the west side of Nelson's claim. When I last saw them in 1900 they were in the position as when I first staked them out. The initial stake of the Grant claim was placed on one of the corners, the upper corner of No. 6 Good Luck, right opposite one of my stakes—which corner I am not positive. It was a center stake. The initial stake of No. 1 Bench Moonlight was a corner stake. Referring to the map, Exhibit "C" attached to my deposition, my Bench No. 1 Moonlight was right east from the Moonlight Springs and dam.

Q. Did your said No. 1 Bench Moonlight as marked on the ground take in any of the springs, if so, were such springs above or below the dam?

(Deposition of Andrew Jensen.)

A. No, it did not, but No. 6 Good Luck did.

The upper end stakes of my Bench No. 1 Moonlight were a little nearer to Anvil Mountain than the upper end stakes of the Nelson or Carlson claim; they were up on the bench above the willows. The upper end stakes of my Bench No. 1 Moonlight were nearer to Anvil Mountain than the stakes of the Moonlight or Lyng claim. There was six inches to a foot and a half of [15] snow in places when we staked Bench No. 1 Moonlight and about the same amount of snow when No. 6 Good Luck was staked, and also when the Grant claim was staked. The several claims were staked in the daytime and I would say between ten and four o'clock.

When I staked No. 1 Bench Moonlight, Robert Lyng's stakes on his Moonlight claim were visible and the location stakes of the Nelson on the east. When I saw the stake on No. 6 Good Luck, Robert Lyng's on Moonlight were visible; I also saw the stakes of No. 1 Below on Anvil Creek belonging to Lindeberg. When the Grant claim was staked, all the stakes of No. 6 Below Good Luck and also the upper stakes of Robert Lyng's on Moonlight and the two upper stakes of Bench No. 1 on Moonlight owned by me were visible. At the time I staked Bench No. 1 Moonlight, as far as I remember there was six stakes marking the Moonlight or Bob Lyng's claim. Only one stake marked the Grant claim at the time of its location. I do not know anything about the east fork of Moonlight. My Bench No. 1 on Moonlight took in all the willows; there was not any wil-

(Deposition of Andrew Jensen.)

lows between my stakes and the base of Anvil Mountain; there were no willows on the Grant claim that I remember; there might have been a few, possibly. There was some willows around the Moonlight Springs and also a little above the Springs; that is, in a northwesterly direction toward the mountain. The willows were visible at the time of the location of these claims.

Q. In what direction with reference to Anvil rock, did the lengthwise center line of No. 1 Bench claim run?

A. I would say it run southerly and that the Anvil rock was northerly above.

Q. In what direction with reference to Anvil rock did the [16] lengthwise center line of the Grant claim run?

A. I would call it northwesterly as far as I could remember.

Redirect Offered by the Plaintiff.

The first map I saw was from an eastern representative of an eastern firm who showed me a map and talked to me about the location of the Grant claim. The next was last August when Mr. Holt from Fargo, N. D., came to my place and showed me a map and wanted me to look it over and see if I thought it was nearly correct, and asked me to mark out on the map where those claims were originally located. I pointed out on the map where I thought the claims were originally located, just about as I have marked it in my testimony. I told Mr. Holt the Grant claim looked to me to be too far east. It

(Deposition of Andrew Jensen.)

should have laid more to the west of its location, as shown on the map, Exhibit "E." I got this map, Exhibit "E," from Mr. Holt.

(Recital:) Said exhibit "E" was marked Plaintiff's Exhibit "J" for identification and is similar to Plaintiff's Exhibit "H" for illustration.

Q. Who, if anyone, in either Fargo or Buffalo, N. D., on behalf of the plaintiff, Pioneer Mining Company, has conversed with you about or pertaining to the controversy in this action?

A. Mr. Holt has talked with me about the location of these claims but not about the controversy; that is all we ever talked about. He asked me to locate as near as I could the location of the claim, the way they were originally staked. We have never talked about anything else except that he asked me if I would go as a witness to Alaska. Mr. Holt is an attorney of the firm of Engerud, Holt and Frame, of Fargo, North Dakota, and he came out and asked me to go to Alaska as a witness. This talk took place in August, 1911. He had a map similar to this Exhibit "E." [17]

Q. When was the last time that you were on any of the claims in the vicinity of Moonlight Springs, and what examination, if any, did you make of any of the placer claims in that vicinity?

A. In September, 1900. I did not make any examination except I saw the stakes there.

Mr. GILMORE.—I offer in evidence Exhibit "A," the location notice of No. 6 Good Luck. Exhibit "B," the location notice of Bench No. 1 Moonlight,

and Exhibit "D," location notice of the Grant claim, all referred to as Exhibits "A," "B" and "D" in the deposition of Andrew Jensen.

The COURT.—They may be received subject to your proving them.

(Exhibits "A," "B" and "D" marked Defendants' Exhibits Nos. 1, 2 and 3, and are as follows:)

Defendants' Exhibit No. 1.

Anvil Creek, Jan. 2nd, 1899.

Cape Nome Mining Dist.

Bench Claim No. 6.

I the undersigned claim 660 feet from this state Northerly running parallel with claim No. 1 below southern side of Anvil Creek; thence easterly 1320 feet; thence southerly to Moonlight Claim; thence along Moonlight Claim to stake No. 2; thence west-erly to point of beginning.

ANDREW JENSEN.

Witnesses:

OTTO SCHUELER.

C. L. SPANGGARD.

Recorded Jan. 17, 1899, 1:15 P. M. Vol. 3-64."

[18]

Defendants' Exhibit No. 2.

Cape Nome Mining District.

January 3rd, 1899.

MOONLIGHT CREEK BENCH CLAIM No. 1.

I the undersigned claim 1320 feet towards Anvil Mountain and 660 feet towards Moonlight Creek, be-

ing bounded N. W. by Moonlight Claim in the east by Moonlight Claim.

ANDREW JENSEN.

Witnesses:

O. SCHUELER.

C. L. SPANGGARD.

Filed for record 1:15 P. M., Jan. 17, 1899. Vol. 3-64.

G. W. PRICE, Dept."

Defendants' Exhibit No. 3.

**NOTICE OF LOCATION CLAIM NO. 1 BENCH,
CAPE NOME MING. DISTRICT.**

I the undersigned do this the 9th day of Jan. 1899, Locate and claim 20 acres of Placer mining ground on the mountain known as Anvil, described as follows:

Commencing at eastern end of Robert Lyng's MOONLIGHT Claim and extending in an easterly direction 1320 ft. & 330 ft. on each side of the center stake. This claim is located on the Western base of Anvil Mt.

W. N. GRANT, Locator.

Witness:

ANDREW JENSEN.

Filed for record 10:10 P. M., Jan. 17, 1899. (Vol. 3-59.)

G. W. PRICE, Dept."

Testimony of F. R. Cowden, for Plaintiff.

F. R. COWDEN, a witness on behalf of the plaintiff, being duly sworn, testified as follows:

My name is F. R. Cowden. I am a deputy recorder of the Cape Nome Mining and Recording Dis-

(Testimony of F. R. Cowden.)

trict. I have been deputy recorder since 1906. I am the custodian of the records of real property and mining locations in this District. I have the original location notice of No. 1 Moonlight placer claim, in Vol. 3, page 64.

Mr. COCHRAN.—We offer in evidence the record of the original notice of Bench claim No. 1 Moonlight Creek, contained on page 64, Vol. 3 of the Records of this District as follows: [19]

“NOTICE OF LOCATION.

Cape Nome Mining District, Jan. 3, 1899.
Moonlight Creek Bench Claim No. 1.

I, the undersigned claim 1320 feet toward Anvil Mountain and 660 feet toward Moonlight Creek, being bounded N. W. by Moonlight Claim, in the east by Nelson's Moonlight Bench Claim.

ANDREW JENSEN.

Witnesses:

O. SCHUELER.

C. L. SPANGGARD.

Filed for record 1:15 P. M., Jan. 17, 1899.

G. W. PRICE, Deputy.”

Cross-examination.

I heard Mr. Cochran read the notice. He read it with the notations which had been put in with lead pencil—the word Nelson's.

Q. Is that part of the original record?

A. No, I wouldn't consider it. I didn't consider it was when I made the certified copy. I saw that notice a long time ago. Several times. That lead pen-

(Testimony of F. R. Cowden.)

cil mark has always been there.

Q. I ask you to examine that and state whether or not the pencil notation of the word Nelson's is in the original handwriting.

A. It is not. (Continuing:) I am familiar with the handwriting of G. W. Price, who was deputy recorder in the earlier times.

Q. Will you state to the Court if from your experience with his writing in this particular book, whether or not the word "Nelson's" written in pencil is in Mr. Price's handwriting or not?

A. No, it is not.

Redirect Examination.

I know that Dr. Kittleson was recorder at the time but I could not state whether that is Kittleson's writing or not. He had quite a number of deputies.
[20]

Testimony of Louis Stevenson, for Plaintiff.

LOUIS STEVENSON, a witness on behalf of plaintiff being duly sworn, testified as follows:

Q. Examine the record which I hand you, Mr. Stevenson, being page 64, Vol. 3, of the records of the Cape Nome Mining Precinct, the record of a mining location. I particularly call your attention to some pencil writing in the notice of location of Andrew Jensen of Bench Claim No. 1 Moonlight, have you ever seen that pencil writing in that location notice, Mr. Stevenson?

A. I have. (Witness continuing:) I first noticed it there in 1903 or 1904. I think Billy Sale was in

(Testimony of Louis Stevenson.)

the recording office at that time, and I asked him whether that belonged to it; that was in 1903 or 1904. I had nothing to do with that entry. That was shortly after the Pioneer Mining Company completed its deal with McKay.

Mr. COCHRAN.—I offer in evidence certified copy of power of attorney from Andrew Jensen to E. T. Hatch of a half interest in Bench claim No. 1 on Moonlight, located January 3, 1899. The deed includes other property also.

Mr. GILMORE.—We have no objection. We now stipulate that the Jensen record title to Bench claim No. 1 on Moonlight is in the plaintiff.

The COURT.—It may be received and marked Plaintiff's Exhibit "C."

Mr. COCHRAN.—I now offer in evidence deed from E. T. Hatch to D. W. McKay, certified copy of the record, of his interest in Bench No. 1 Moonlight dated July 8, 1901.

Mr. GILMORE.—No objection. [21]

The COURT.—It may be received. Marked Plaintiff's Exhibit "D."

Mr. COCHRAN.—I now offer in evidence certified copy of power of attorney from Andrew Jensen to Thomas D. Jensen, dated August 20, 1900.

Mr. GILMORE.—No objection.

The COURT.—It may be received and marked Plaintiff's Exhibit "E."

Mr. COCHRAN.—I offer in evidence certified copy of record of deed dated July 30, 1902, Andrew Jensen to D. W. McKay, of all his right, title and

interest in Bench claim No. 1 on Moonlight Creek and other claims, executed by Thomas Jensen as attorney in fact, together with the notations.

Mr. GILMORE.—No objection.

The COURT.—It may be received and marked Plaintiff's Exhibit "F."

Mr. COCHRAN.—I now offer in evidence certified copy of the record of a deed from D. W. McKay to the Pioneer Mining Company, dated September 16, 1903, conveying Bench claim No. 1 on Moonlight Creek.

Mr. GILMORE.—No objection.

The COURT.—It may be received and marked Plaintiff's Exhibit "G."

Mr. COCHRAN.—I now offer in evidence the deposition of Jafet Lindeberg on behalf of plaintiff, with the stipulation.

Mr. GILMORE.—The stipulation was in effect that we [22] might make any objections except as to the form of the question, at the time of the offer during the trial.

Deposition of Jafet Lindeberg, for Plaintiff.

My name is Jafet Lindeberg. I have been living in the District of Alaska since 1898. I am president of the plaintiff, Pioneer Mining Company, and know a placer claim called Bench No. 1 Moonlight Creek, the claim that the plaintiff asserts title to in this action. I first became acquainted with the claim in 1899. The plaintiff acquired title to that claim in

(Deposition of Jafet Lindeberg.)

1903 to the best of my recollection, by purchase from D. W. McKay. The consideration was five thousand dollars paid to D. W. McKay. The Pioneer Mining Company had an option on this claim prior to the time of purchase. They acquired the option to purchase the claim in the fall of 1901 or spring of 1902, I don't remember which, and the purchase was made in the exercise of that option. I do not think I was on the ground with McKay. I was on the other side of Moonlight with him. We had another claim on the other side which McKay also owned and which we had an option on. That was No. 6 Good Luck. Mr. McKay showed me a plat of the claim. We may have a plat in the vault of the company; I have not looked for it. I think the original plat was made by a man by the name of Monroe but the second plat was made by Gibson. I think that plat was made in 1901, I am not quite certain. I am familiar with the claim as its boundaries are now marked. To the best of my recollection the boundaries are the same now as they were at the time the plaintiff purchased the claim. I know Andrew Jensen. I first knew him in Nome in the winter of 1898 and 9 and since. [23] Andrew Jensen located the claim in January, 1899, I believe it was. I saw Jensen working on there in 1899 on this claim, and I talked with him.

Mr. COCHRAN.—I ask leave to detach the map from the deposition.

The COURT.—It may be detached.

Mr. COCHRAN.—I now offer the map in evidence.

Mr. GILMORE.—I object on the ground that it

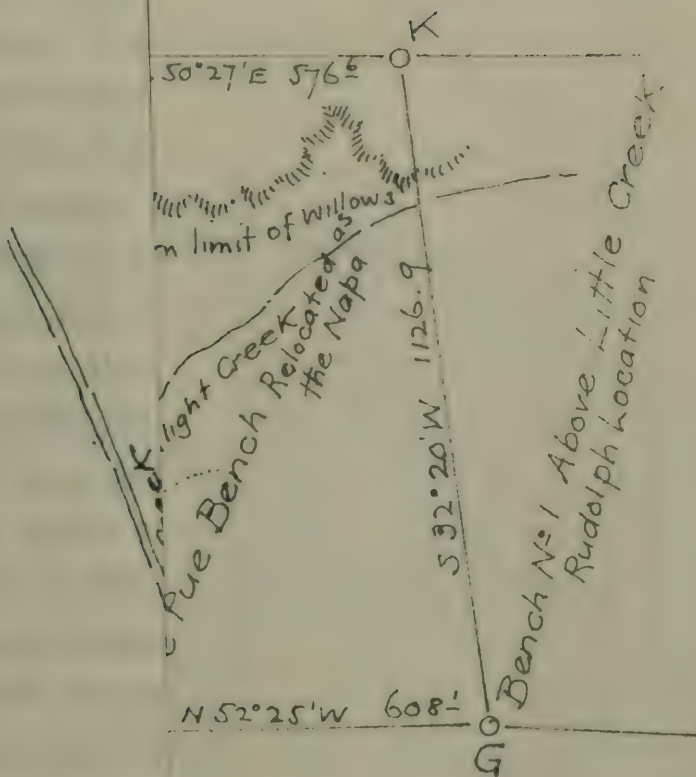
(Deposition of Jafet Lindeberg.)

has not been proven.

The COURT.—It may be received for the purpose of illustration and proven later.

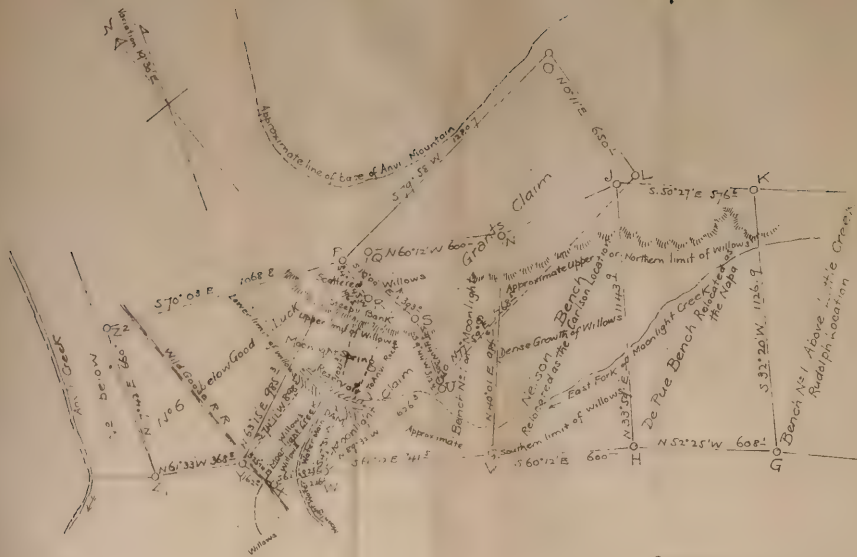
(Admitted for illustration and marked Plaintiff's Exhibit "H.")

(Said exhibit being as follows:) [24]



Surveyed in 1901 and 1902
 by Arthur Gibson C.E.
 Plaintiff, Nome, Alaska.

Scale 1" = 400 ft.



Plaintiff's Ex. 11

Surveyed in 1901 and 1902
by Arthur Gibson C.E.
Nome Alaska.

Scale 1" = 400 ft



(Deposition of Jafet Lindeberg.)

(Witness continuing:) I saw Jensen working on this claim in the latter part of May, 1899. To the best of my recollection it was about the time of the break-up. He was working close to the east line of the claim, or about the middle as to the north and south of the claim, as now marked. He was sinking a shaft. I had a conversation with him at that time. I think Alfred Nillima was with him and another man that used to carry the mail up north—I think his name was Johansen Stallagro. I know where the northeast corner stake of a claim called No. 2 Bench of the Left Fork of Moonlight is now situated, being situated on No. 1 Bench Moonlight. Jensen was sinking a shaft when I saw him in the spring of 1899, possibly one hundred to one hundred and fifty feet from the line to the west or northwest rather, and northeast of the northerly end of Moonlight claim. I now designate the point with the letter “A” with a circle around it, upon the map of a survey made by Arthur Gibson in 1901 or 2, handed to me, which approximately represents [26] the place where I saw Jensen sinking that shaft. The shaft that I saw Jensen sinking was within the boundaries of Bench claim No. 1 as it is now designated and marked.

Cross-examination.

Q. You don't claim to know anything where the claim was originally located of your own knowledge, do you?

A. Not with the exceptions of where I saw Jensen working.

(Witness continues:) I was not there when Jen-

(Deposition of Jafet Lindeberg.)

sen located the claim in 1899. As a matter of fact, all I know about it is what McKay told me and he showed me a plat of the survey of the claim, as he claimed it in 1901 or 1902, and then afterwards sold it to me. This bench claim is generally known as No. 1 Bench while the Good Luck, or No. 6 Bench is sometimes known as the McKay Bench, I believe. I contracted with a mineral surveyor, E. Franklin Lewis, to make a survey of the ground for patent, either in 1903 or 4, I don't remember. He made a survey I believe. I do not know that because I was not with him. I just instructed him to survey the claim. I don't think that we ever claimed that the northwest corner of Bench No. 1 was identical with the southeast corner of No. 6 Good Luck, Mr. Lewis may have made a mistake in surveying, I don't remember as to that, but I am sure we never claimed that. I have not examined his survey that he filed in the land office.

Q. Now, why didn't you go ahead and get that patent at that time? Why didn't you go ahead with the proceedings?

Mr. COCHRAN.—Objected to as wholly immaterial to any issue in this case.

The COURT.—Objection sustained.

To which ruling of the Court the defendants then and there excepted and the exception was allowed.
[27]

Q. Now, you knew that you could not obtain a patent—that you would have to litigate for the land in the land office—that is the principal reason why

(Deposition of Jafet Lindeberg.)

you did not, is it not?

Mr. SCHOFIELD.—Objected to as immaterial.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

(Witness continuing:.) I believe in 1901 to the best of my recollection, in 1901 we had a written option from McKay to purchase the claim. I believe it was in 1903 or 4 that we completed our purchase. The option might have been in my name. I very often purchased property for the plaintiff company in my own name. If the option was in my name it was for the Pioneer Mining Company. I think the written option was in the papers that were destroyed because we took up the option by a deed later. The deed was delivered in 1903 by McKay in pursuance to a written option which stood in either my name or the company's name, from the year 1901. I do not know as I personally ever investigated the title or the boundaries of Bench No. 1. I caused an investigation of it to be made about the time and after the option was taken from McKay. We may have thought that there was some chance of an old underground channel running across the flat. I had some idea or theory that there might be.

Q. Did you then purchase Bob Lyng's Moonlight claim in 1903?

A. The Moonlight Water Company purchased two-thirds interest in the Moonlight claim and the Pioneer one-third interest.

(Deposition of Jafet Lindeberg.)

Q. The Moonlight Water Company is a partnership, is it not?

A. No, a corporation. It has since been two or three corporations. [28]

(Witness continuing:) I had some stock in the company at the time of the purchase of the Moonlight claim from Bob Lyng I had five or ten per cent of the stock at that time. I believe I had something to do with the purchase of the Moonlight claim from Bob Lyng, if I remember right. I believe that ground was purchased by Mr. Milligan—Sam Milligan, who was manager of the Moonlight Water Company, or the Nome Water Company, at that time. I believe the two claims were owned in this manner: Mr. R. T. Lyng owned one-third interest in each of the two claims—Moonlight claim and No. 2 Below; that Robert Lyng owned one-third in each claim; Lindbloom owned one-third in each of the claims. Mr. Lindbloom conveyed No. 2 below to the Pioneer Mining Company, but for some reason overlooked the fact that he had a verbal agreement with R. T. Lyng and Robert Lyng who owned that claim in common. When Mr. Lindbloom conveyed his one-third interest to the Moonlight Water Company in the Moonlight claim, R. T. Lyng and Robert Lyng, they having agreed to convey the claim to the Water Company, did not do so, but then offered to sell their interest in the Moonlight claim to the Moonlight Water Company, which offer was accepted by Mulligan, who was the manager. The Moonlight Water Company is a corporation and I own about one-fifth of it. The

(Deposition of Jafet Lindeberg.)

Moonlight Water Company at the present time is owned by myself, Mr. Lindbloom, Mr. Brynteson, Mr. Kjelsberg and Mr. W. H. Metson. They also constitute the principal stockholders of the Pioneer Mining Company. They took the Moonlight claim on a mortgage. I believe that was in 1902. The Pioneer Mining Company bought the Winter fraction in the fall of 1903. The Winter fraction covered this ground and joined the Bob Lyng claim, running down to the so-called Standard claim. I [29] knew a man named Doverspike.

Q. Do you remember of Howard and Doverspike and others working near Bob Lyng's claim, a little east of Bob Lyng's claim during the winter of 1902 and spring of 1903?

A. I found after I came in to Nome that a man by that name had been working on or near the Moonlight claim.

Q. About how far—they had taken out a winter dump had they not?

A. I think they had taken out a very small dump that winter.

(Witness continuing:) I think their dump was a couple of hundred feet off of the north end line of the Moonlight claim and within the boundaries of Bench No. 1 Moonlight, as the plaintiff has it surveyed on this plat.

Mr. GILMORE.—We next made an offer which we now withdraw.

Mr. COCHRAN.—At this time we offer the plat in evidence; they withdraw it, we offer it.

(Deposition of Jafet Lindeberg.)

Mr. GILMORE.—We object to it on the ground that it has not been proven.

The COURT.—The map may be received in evidence and marked Exhibit “H.” To which ruling of the Court the defendants then and there excepted and the exception was allowed. Said exhibit being heretofore set forth as Exhibit “H” for identification. [30]

Q. Now, Mr. Lindeberg, when was the first time that you heard of the Grant claim, that you knew there was such a claim?

A. I heard of the Grant claim in 1899 through Mr. Grant, but not this same ground. He told me he had located a claim on the Anvil hillside.

Q. Now, referring to this map here and where the surveyor [31] has the initial stake of the Grant claim at the point ‘S,’ about how far was the dump of Doverspike and Howard from this initial stake, at the point ‘S’?

A. I think that the dump had been sluiced up or done away with at the time I returned to Nome. I could not say. In the spring of 1902 or 1903.

Q. I have forgotten myself what year that was—do you remember the time the Moonlight Water Company filed an injunction suit against Doverspike and Howard? A. Yes, sir.

Q. Enjoining them from polluting the Moonlight water? A. Yes, sir.

Q. That was the spring you refer to?

A. Yes, sir.

Q. Now, if they had had a dump on the ground at

(Deposition of Jafet Lindeberg.)

that time it had been cleaned up at the time you arrived here, you say?

A. Yes. (Witness continuing:) The dump referred to was within the disputed area as now shown upon this map.

Q. Now, they afterwards sued you and your associates, did they not?

A. Yes, sir, I think they sued the Moonlight Springs Water Company.

Q. Of which you were a member?

A. Of which I was a member, yes, sir.

Q. They obtained judgment against you for damages—you appealed—the case was reversed and ordered back for a new trial—tried over again and a second judgment was obtained against you for damages. A. Yes, sir, I think that is true.

Q. The litigation ran through five or six years, did it not? [32] A. Yes, sir.

Q. And you finally paid the judgment, didn't you?

A. I don't know whether that has been paid yet or not.

Q. It is a fact however, that you did pay it—if the records show that you did?

A. Yes, sir, of course, whatever the records show in the matter. The Moonlight Springs Water Company paid it. (Witness continuing:) From 1901 to the present time I was general manager of the Pioneer Mining Company and I have been president of the Pioneer Mining Company for, since 1901, since it was incorporated.

(Deposition of Jafet Lindeberg.)

Q. Now, during the time, Mr. Lindeberg, from 1902, when Howard and Doverspike took out a dump, either you or the Moonlight Water Company, through your attorneys secured an injunction, from that time they have been suing you for damages, and up until the time the judgment was paid, if it was paid, from 1902 up until 1910, somewhere along there, the Pioneer Mining Company have never intimated that they claimed title to the ground in dispute?

A. I don't think that was ever questioned by either parties. (Witness continuing:) We have always asserted title to the ground; I don't know of any other title that was asserted in that lawsuit at all; I believe the record will show however.

Q. Did you ever, Mr. Lindeberg, at any time disturb or molest anyone working the Grant claim, within the boundaries of the Grant claim, as shown by this plat? (Exhibit "H.")

A. Not with the exception of telling them in a very nice way that we claimed that ground; that they were not doing [33] right trying to work or working that ground that we claimed. Of course, no one could hurt it very much—it was very soft.

Q. To whom did you make complaint?

A. To Bard and his lessees, one of which was Charles Butler, and Hopkins, and I believe to Mr. Grant.

Q. You knew, however, that these gentlemen were mining, taking gold out and washing up their dumps?

(Deposition of Jafet Lindeberg.)

A. I believe that all the owners of that ground that winter were outside.

Q. They were sluicing up their dumps in June, after you had returned from the outside, were they not?

A. No, there was never anybody that sluiced up except Hopkins, and I did not like to fool with that fellow very much, as he would possibly have done something violent. He might have acted pretty badly if anyone had tried to throw him off bodily. I didn't want to do that but I told him several times.

Q. Now, Mr. Muther worked on that ground too, didn't he?

A. Yes, and I told Mr. Muther several times also.

Q. Now, as a matter of fact, Mr. Muther worked on that ground several winters—two winters anyway, and took out dumps?

A. I don't remember his taking out much dumps; he prospected there several times, doing assessment work more than anything else.

Q. Well, you know he worked on that ground at various times, within the very ground in dispute?

A. Yes, sir. [34]

Q. Now, is it not a fact that the Pacific Coal & Transportation Company through its various lessees have gotten thousands of dollars out of this ground and within the boundaries of the ground in controversy?

A. Oh, no, not very much work has been done—some prospecting and assessment work.

Q. Is it not pretty well honeycombed with tun-

(Deposition of Jafet Lindeberg.)

nels, shafts and tailing piles?

A. No, sir, mostly assessment work shafts—prospecting shafts.

Q. You are not aware then, of the fact that there is an underground tunnel of over a hundred feet dug there one spring, or one winter and spring?

A. I did not know that, no, sir. (Witness continuing:) I did not know that they had been working extensively there, because I never—I never remember of seeing them sluicing or taking any pay out there.

Q. Now, is it not a fact, Mr. Lindeberg, that you never made any serious claim on behalf of the Pioneer Mining Company that you conflicted with the Grant claim, or with anyone, up to the time you brought this suit?

A. There was no one that was doing the ground any harm with the exception of a little sniping here and there occasionally.

Q. Now, is it not a fact that you never would have thought of bringing this suit until Mr. McCumber had gone out there and struck that channel of pay and was timbering a shaft down into some very rich ground, and was getting ready to mine with boiler and pumping apparatus into this rich ground? [35]

A. I don't know whether he has struck pay there or not.

Q. Mr. Stevenson went out there and panned on the ground?

A. I don't know, maybe Mr. Stevenson did so.

Q. In the very shaft that Mr. McCumber is work-

(Deposition of Jafet Lindeberg.)

ing in there now?

A. No, sir, I did not know that.

Q. Now, you know the McCumber shaft in the southwest corner of the Grant claim, about where I am indicating with my pencil on this plat (Exhibit "A")?

A. No, I do not think that is what is called the McCumber shaft.

Q. It is the one that Mr. McCumber is timbering and getting ready to mine, is it not?

A. Yes, I believe so.

Q. Is it not a fact that Mr. Stevenson has been there at that shaft and panned several times, occasionally with Mr. McCumber, and has brought the report of the pans to you?

A. I do not know that Mr. Stevenson had ever been in that shaft or panned there.

Q. And is that not the reason for the bringing of this suit, after showing the pans or reporting the pans to the Pioneer?

Q. As I told you I did not know that Mr. Stevenson had ever been in that shaft at all, or had ever panned there.

Q. Well, did you authorize him to bring this suit, or did he bring it of his own accord?

A. I authorized him, yes, sir, to bring suit if necessary.

Q. He brought suit in November after you had left for the states? A. I believe so. [36]

Q. Well, you know that he did bring suit in November or December after you had left for the States that fall?

(Deposition of Jafet Lindeberg.)

A. I said, yes, I believe he brought suit sometime about that time, after I had gone outside.

Q. You knew at the time you authorized him to bring this suit that McCumber and men were moving upon the ground, mining within the disputed area, or conflicting area did you not?

A. I did not know that anybody was living on the ground. In fact I did not think that there was anyone ever on the ground with the exception of this summer.

Q. Well, you know where the McCumber cabin is, do you not? The red cabin on the brow of the hill, just about this point here (indicating on Exhibit "H")?

A. There are a number of cabins, or have been a number of cabins there at different times, I believe.

Q. But this particular cabin, this red cabin about here, on the brow of the hill?

A. There is a cabin there but I don't know whose cabin it is. (Witness continuing:) It is a red cabin but I have never paid any particular attention to any cabins there and I could not tell you when I first saw that cabin. There was nobody working on the claim before I went outside so far as I could tell.

Q. Did Mr. Stevenson wire you any information before you authorized him to bring suit?

A. He wired me that somebody had been on No. 1 Bench.

Q. He told you that they were digging a shaft there and were down into pay, didn't he?

(Deposition of Jafet Lindeberg.)

A. I don't remember what the words of the wire were.

Q. Have you a copy of that telegram that Mr. Stevenson sent you? [37]

A. I don't know whether I have or not.

Q. Where would you be liable to find it—in the files of the Pioneer Mining Company or in your own private papers?

A. I was in San Francisco at the time, if it is there yet I don't know, but if we have the wire it is in San Francisco.

Q. Does Mr. Stevenson keep a copy of all the telegrams he sends to you during the winter time?

A. I think he does, but I am not certain.

Q. But he wired you that somebody was digging a shaft—did he say McCumber?

A. I don't remember that.

Q. But he wired you that somebody was digging a shaft? A. Yes, sir.

Q. And you wired back to bring suit?

A. He had his instructions prior to my wiring.

Q. Did you wire him at that time?

A. I think I told him to bring a suit.

Q. Did you tell him what kind of a suit to bring?

A. I did not.

Q. Did you talk with anybody, with Mr. Metson or anybody else about what kind of a suit to bring, before you left, or at any time before suit was brought? A. I did not.

Q. Had you been talking to Mr. Metson before that as to what kind of a suit to bring?

(Deposition of Jafet Lindeberg.)

A. I don't remember as to that, I believe I showed Mr. Metson the telegram.

Q. Did you take the telegram that Mr. Stevenson sent you and show it to Mr. Metson?

A. I believe I did. [38]

Q. Did you send any telegram back to Mr. Stevenson?

A. I sent one telegram—he may have sent—

Q. No, I mean did you send a telegram back to Mr. Stevenson in answer to this one about this particular claim? A. Yes, sir.

Q. What did you say to him?

A. Consult a lawyer.

Q. Did you tell him what lawyer?

A. I don't know as I told him in the telegram what lawyers.

Q. Give me the substance of the message as near as you can recollect it, it was not so very long ago, about the last of October or November, something like that?

A. I think the telegram read something like this: "Prevent parties from working on Bench No. 1; consult attorneys "and something like" bring suit if necessary."

Q. How long was that after you had left Nome?

A. A month or so; a month and a half, I believe. (Witness continuing:) I left Nome about the middle of October. I don't think Mr. Stevenson informed me in the telegram that the party sinking on the claim had pay. I don't think he gave me any information about what they were doing or

(Deposition of Jafet Lindeberg.)

about the kind or character of the ground they had uncovered.

Q. Now, why didn't you bring this suit against the owners of the Grant claim people before, in 1903, when you first bought this title?

A. There was nobody molesting the claim at that time.

Q. They were working on there, were they not?

A. Yes, assessment work, they were mainly assessment work and nothing else, once in a while there might have been someone rocking, or maybe a little sniping, nothing serious. [39]

Q. Didn't they take out a dump or dumps and sluice them afterwards?

A. Once in a while rocked, I believe, I don't think anyone ever did any sluicing on that ground.

Q. As a matter of fact didn't they take out a dump in the winter of 1902 and 3?

A. We didn't have the deed then, in 1902.

Q. As I understand you you had an option, perfected later by a deed? A. Yes, sir.

Q. Now, at that time, in 1902 and 1903 they took out a dump and you enjoined them from sluicing up, and they afterwards got a judgment against you and the Moonlight Water Company, for \$2,500, did they not?

A. I don't think that they took anything out of their dump. I don't think there was fifty dollars worth of gold in their whole dump. In fact, it was not what you would call a dump at all. I believe by their own testimony of what they ever got out

(Deposition of Jafet Lindeberg.)

of it, was less than fifty dollars worth of gold.

(Witness continuing:) The Moonlight Water Company enjoined them from washing that dump and polluting the waters of Moonlight Springs. The injunction was afterwards dissolved and they sued the Moonlight Water Company for damages and obtained a judgment for \$2,500.00, of which company I was a stockholder and a member.

Q. Now, then, why did you not, at that time, as manager of the Pioneer Mining Company, bring a suit to quiet title or a suit in ejectment to eject these men from that ground?

A. I do not know of any reason to be given for it—the Pioneer Mining Company simply did not feel like doing [40] so, at that time.

(Witness continuing:) After that time Muther and Hopkins were working there under a lease from the Grant people; they were rocking and did some assessment work. They ceased working there long ago, when I notified them to quit. I never saw Bard on the ground, but I saw him at his office very often.

Q. Did you ever do any mining, and when I say you, I mean the Pioneer Mining Company, through you as its manager and president, within the boundaries of the disputed area, of any kind or character?

A. We have never done any mining upon Bench No. 1 with the exception of in the lower end, the lower westerly end where we are working hydraulicking at the present time.

Q. Did you ever do any mining whatever, within the boundaries of the disputed area?

(Deposition of Jafet Lindeberg.)

A. Never any actual mining, no, sir.

Q. Have you at any time, you or the Pioneer Mining Company, been in possession of a solitary foot of the disputed area?

A. I think we have always been in possession of the claim.

Q. Now, tell the Court in what way you have been in possession of this disputed area, if you can?

A. We have had our pipe-line across the claim; we have drilled across as we have practically run across all of our claims, crossing this ground.

Q. You have at the present time the same water pipes strung across the ground in conflict?

A. Yes, sir.

Q. On the same claim?

Q. Don't all of the works that you have now cross on the [41] Moonlight claim in the same way at the westerly end? A. Yes, sir.

Q. On Moonlight? A. Yes, sir.

Q. And on Bench No. 1 and the Winter fraction?

A. Yes, sir.

Q. And numerous other claims now owned by the Pioneer Mining Company and in that vicinity?

A. Yes, sir.

Q. And you have some pipes strung over the rest of the ground claimed in the same manner, the ownership claimed in the same manner, as the ground in conflict? A. Yes, sir.

Q. So that you have the same possession of the whole of the Grant claim that you claim to have of the ground in conflict? A. You could call it that.

(Deposition of Jafet Lindeberg.)

Q. Well, I am just asking you if the possession you now claim of the ground in conflict is not the same possession that you have of the rest of the Grant claim, I am just asking you, Mr. Lindeberg?

A. I did not know that a person in order to have possession of a mining claim would have to be upon every foot of the ground claimed.

Q. That is not an answer to my question; you have not answered my question.

A. When you are mining on a claim, I think that ought to be sufficient possession.

Q. Now, when you speak of mining on a claim, on that claim in particular, you refer to mining the portion of [42] the claim below the pipe-lines, between you and Little Creek?

A. Near, I believe to the northwest corner of the claim—I mean the southwest corner.

Q. You never have done any mining on this so-called No. 1 Bench, as you have it drawn out here on this map, Exhibit “H,” in the northerly side of the pipe-line on this claim? A. No, sir.

Q. So, as a matter of fact, all the mining you have done on No. 1 Bench has been south of Bob Lyng’s Moonlight claim line?

A. Yes, sir, but we are working on the hill now.

Q. But you have never mined north of the lower side of Bob Lyng’s Moonlight claim?

A. Not yet.

Q. And you never have in any manner mined on the ground in controversy, other than this pipe-line?

A. We have not reached that part of it yet, no, sir.

(Deposition of Jafet Lindeberg.)

Redirect.

I am going outside to San Francisco, on the steamer "Victoria" to be absent from the District of Alaska during the coming winter.

Q. Has the assessment work been done each year on this claim by the owners, since 1901, since you obtained an option on the claim?

Mr. GILMORE.—Objected to as calling for a conclusion and not proper way of proving the fact, if it is a fact.

The COURT.—Objection overruled. To which ruling of [43] the Court the defendants then and there excepted and the exception was allowed.

A. Yes, sir, by the Pioneer Mining Company.

(Witness continuing:) The character of the ground that Mr. Jensen was digging in at the time I saw him in 1899, was lime and gravel. The Pioneer ditch runs across the upper end of the claim. It is called the Anvil Ditch, and was built in 1902 and 3, I believe by the Pioneer Mining Company, and has been owned by the Pioneer Mining Company ever since. The Pioneer Mining Company owns a number of claims in the vicinity of No. 1 Bench Moonlight, and they are carrying on a general system of hydraulic mining; they are working up towards this ground from the lower properties owned by the company with the intention of mining this ground when it is reached.

Recross-examination.

Q. Do you claim all of the placer ground through which your ditch runs in the Nome District?

(Deposition of Jafet Lindeberg.)

A. Yes, some of the ditches.

Q. But do you claim all of the placer ground in the vicinity of Anvil Mountain over which your ditch runs, by virtue of this ditch? A. No, sir.

Q. Now, your Anvil ditch runs across the upper end of the Grant claim, does it not? A. Yes.

Q. And crosses ground that is not in conflict, as well as that which is in conflict?

A. It ends there, our line ends there. [44]

Q. But it runs across this corner up by the northwest corner of the Grant claim that is not in dispute, and comes around in here (indicating)?

A. Yes, runs over there.

Q. You are not claiming anything by reason of that ditch there? A. No.

Q. Now, Mr. Bard gave you permission, did he not, to run your ditch line across this claim, didn't he? A. No. [45]

Testimony of John Brower, for Plaintiff.

JOHN BROWER, being first duly sworn, testified as follows:

My name is John Brower. I have resided in Nome since June 14th, 1900. I have followed drilling as a business since 1905, using a drill similar to a Keystone. I know a bench claim called No. 1 on Moonlight east of Moonlight Springs in the Nome District. I knew that claim in 1907. I have been on the claim recently. I did some drilling on that claim in 1907 for the Pioneer Mining Company.

Q. Now, Mr. Brower, do you know where the ground in dispute is on this map? (Plaintiff's Ex-

(Testimony of John Brower.)

hibit "A.") A. Right in through here.

Q. Where did you drill?

A. We came in through here, right here at that line, and across over that line.

Q. What line is that? A. The telephone line.

Q. Running in here?

A. North of the telephone line. (Witness continuing:) which would be near the letter R. I crossed the ground in dispute in this action. I drilled one or two holes in here, right through here, then I went in here (indicating).

Q. Just designate with a lead pencil line on Exhibit "A"?

(Witness marks map.)

(Witness continuing:) I started up this way, drilled one or two holes then I turned and set my anchor down this way towards No. 2 on the map, then I went along the edge of the dam that stood right in here. I followed the line off No. 1 Moonlight claim. I drilled, I could not say exactly, oh, about six holes right in through here. My two brothers and some other gentleman, I forget his name, and a man by the name of Langstrom was [46] panning for the Pioneer Mining Company. The holes were in the neighborhood of 30 feet deep, I could not say positively, and the expense or cost was about \$1.50 a foot for just the drilling outside of the panning. I had nothing to do with the panning. The drill was similar to the Keystone, one that I built. I rather think the work was done in September, 1907. At that time I didn't see anybody else on No. 1 on Moonlight, ex-

(Testimony of John Brower.)

cept myself and the men assisting me. There was no one else there that I saw, and no one living on the ground that I saw. I know Arthur Gibson, and I was on the claim recently with him. I identified the holes that I drilled in 1907 and I designated them to Mr. Gibson and he tied them in by surveying while I held the line, that is, he made measurements.

Q. Mark on the map approximately where you drilled the first hole, make a small circle?

A. I can't tell just how the spaces run, how many feet, that is supposed to be the telephone line; it looked to me like a long distance on the map, of course I can't judge.

Q. We will mark these five or six holes on the map, that is approximately where you say you drilled two of the holes that you know of? A. Yes.

Q. After drilling those six holes that you have testified to did you drill any other holes on the lower end of No. 1 Bench Claim?

A. I came down, I crossed the telephone line, away down there (pointing) by a telephone pole, just about in here (indicating) I crossed over and went in this direction. Here is the mark I guess right in there.

Q. At 4?

A. After I got in there I came on down here a little further [47] and then down in this direction.

Q. So how many holes altogether did you drill on No. 1 Bench as near as you can state?

A. Six here, one or two holes up here.

Q. How many altogether?

A. About six here and about two up there.

(Testimony of John Brower.)

Cross-examination.

The Pioneer Mining Company employed me to dig the holes. I got my orders from Langstrom, he is here in court now. I think he gave me my orders. Mr. Louis Stevenson was there off and on. I don't believe he told me to drill any particular place. I cannot tell positively whether he told me or not. Langstrom did not tell me the ground was in dispute.

Q. Now, Mr. Brower, you knew of the Grant claim, where the Grant claim was, of course?

A. I didn't know anything about any claims when I was drilling.

Q. You did not know whether you were drilling on Bench No. 1 or the Moonlight claim?

A. I knew by the courses, but I did not know by the particular claims.

(Witness continuing:) In determining where I drilled I go by the telephone lines that is what I recognize. I busted the pipe-line when I was out there, and it is still lying there where I busted it.

Q. Did you do any drilling on 5 Above Discovery?

A. I drilled all along there.

Q. You commenced by working southerly; the railroad crosses here, towards Discovery, where that platform is? A. Yes, sir.

Q. And drilled in a southerly direction down towards Moonlight? [48]

A. Over in that direction, it has been so long since I have been upon the ground I don't remember.

Q. Did Mr. Stevenson give you any reason for going right along where the dam was?

(Testimony of John Brower.)

A. He didn't give me the reason. I could not go below, it was too soft.

Q. So you stayed above? A. Yes, sir.

Q. Was that the reason you drilled above there on account of the ground above being dry?

A. No, that was the orders, they told me where to drill.

Q. Why didn't you drill, why didn't you go along where that dam was, why didn't you go straight across here (indicating)?

A. That was the orders for me to go.

Q. Didn't Mr. Stevenson tell you to go as close to that dam as you could on account of the dam being on the line between the two claims?

A. He told me where to put the holes, he walked ahead and told me where to put the holes.

Q. Told you where to put the holes? A. Yes.

Q. Did he indicate the spot where he wanted the hole drilled?

A. He told me where he wanted the holes put, and I went in that direction, and about the distance apart he wanted them.

(Witness continuing:) The first hole was, I think, in the neighborhood of thirty feet, I struck bedrock in all of them. I can't tell you about the formation. [49]

Q. You went down along this old dam between where the point S and point U are on the map (Plaintiff's Exhibit "A")? A. Yes, sir.

Q. How many holes did you drill, about, in there?

A. Six holes.

(Testimony of John Brower.)

(Witness continuing:) When Mr. Gibson was out with me the other day he told me where the disputed corners were. I knew about where the bunches of stakes were when I was drilling out there. I drilled the holes but I didn't care where the stakes were. I didn't pay any attention to the stakes. I showed Gibson where the holes were.

Q. Did Mr. Langstrom give you any reason for drilling on that line?

A. No, he did not, he gave me my orders.

Q. Where did you go after drilling hole 4?

A. Coming on southeastern, 3 holes.

Q. Towards the line W and V?

A. Kind of a southerly direction.

Q. You never drilled any holes in what is indicated as the Grant claim other than those holes you have told about?

A. That is the only ones I showed him.

(Witness continuing:) I do not know it to be a fact that Louis Woods had drilled for six months on that same ground the year before. I don't know that anyone was on the Grant claim that same year. I was engaged in drilling in the neighborhood of three holes every 24 hours.

Q. What is your best judgment of the time it took you to drill the eight holes, the two and the six?

A. In the neighborhood of three days. [50]

Q. That was sometime around the month of September, 1907? A. Yes, sir.

Q. And during that time you did not observe anybody working on the Grant claim? A. No, sir.

(Testimony of John Brower.)

Q. They could have been working there for all you know?

A. There wasn't anybody, I could have seen them surely.

Q. You don't know where the Grant lines were?

A. There might have been some men working up there.

Q. There might have been?

A. There might have been but I didn't see them, I don't think so.

Q. You did not pay any particular attention to whether they were working there or not?

A. I didn't pay any attention to any other place.

Q. Did you make any observation of where the corners of the Grant claim were at the time you were drilling?

Mr. COCHRAN.—Objected to as not cross-examination.

The COURT.—Objection sustained, to which ruling of the Court the defendants then and there excepted and the exception was allowed.

Q. Did you make any observations of the Grant claim to know whether there were any buildings on the Grant claim at that time?

Mr. COCHRAN.—Objected to as not cross-examination.

The COURT.—Objection sustained, to which ruling of the Court the defendants then and there excepted and the exception was allowed.

Mr. GILMORE.—We offer to show by this wit-

(Testimony of John Brower.)

ness that there were cabins on the Grant claim at that time.

Mr. COCHRAN.—Objected to as not proper cross-examination. [51]

The COURT.—The offer is denied. To which ruling of the Court defendants then and there excepted and the exception was allowed.

Testimony of Andrew John Langstrom, for Plaintiff.

ANDREW JOHN LANGSTROM, being first duly sworn, testified as follows:

My name is Andrew John Langstrom. I live in the Nome Precinct. Have lived here since 1900 off and on ever since. I know the plaintiff company and have been in its employ. I started to work in June, 1900, for the company and have worked for it every summer until the last two summers. I quit work for them in September, 1909, the 14th or 15th. In 1907, in September, I was working for them; at that time I was with Mr. Brower. Started out with him along with his drill, panning and looking out for that. I know the mining claim called Bench No. 1 on Moonlight. I was panning from the drilling made by Mr. Brower on that claim in September, 1907. I was out on the claim a few days ago. I found two holes very plainly and some others that were not so plain, but I could identify four or five of them, and I could see the track where the drill went. I do not know a man by the name of Woods or that he had been drilling up in that part of the country. I saw a drill there but I don't know exactly what year it was.

(Testimony of Andrew John Langstrom.)

Q. How many holes were drilled on No. 1 Bench in 1907 by Mr. Brower and others for the Pioneer Mining Company?

A. About a dozen holes. They were drilled early in September, about the 15th or so and after that. We must have been a week at least or more upon the claim. I made my reports of the pannings of [52] the drillings to Mr. Charlie Johnson, the manager of the Pioneer Mining Company. I have examined the map on the wall, marked Exhibit "A" for Identification, and I recognize where the telephone line runs. We crossed this telephone line and down here went across the pipe-line, the 30-inch pipe-line. (Witness pointing near the letter S.) The pipe-line caved in a little. That is the way we crossed the pipe-line some distance. We drilled two or three holes out there then we went further down. I was out there recently and saw where we crossed the pipe-line. I know where the penstock of the ditch is. We crossed the pipe-line with the drill not very far from the penstock, a little southeast. Mr. Louis Stevenson was with me the other day when I was out there. I pointed out the place where we crossed the pipe-line to him. The nature of that hill is so steep where it drops off, so it is very hard to cross here, to get along with a big machine like Brower had, so we had to follow the best place to drag it across where we were not drilling. The pipe-line caved down a little showing where we crossed. It was a 30-inch pipe and is there yet. We drilled two or three on the northerly end of Moonlight Bench No. 1 and about a dozen

(Testimony of Andrew John Langstrom.)

holes altogether. We found some prospects that I thought was pay. I reported my pannings to the Pioneer Mining Company in detail, to Mr. Charlie Johnson, the manager. Some of the holes were less than 30 feet deep. The first three were and some of the others further down were deeper, some 35 feet. We used a six-inch drill. I did not see anybody living upon this claim or doing any work on it while we were there. I was on the Moonlight Bench Claim No. 1 during 1903. I slept there in a cabin in the winter, about a month. The cabin was in an easterly direction [53] from the old Moonlight dam, about 350 feet south of the willows, a little bit south of the willows. It was within the boundaries of No. 1 Moonlight Bench. I was there in December and maybe a few days in January the following year, 1904. The cabin belonged to the Pioneer Mining Company. I was working for the Pioneer Mining Company doing assessment work. While I was residing upon the claim in 1903 there wasn't anybody else living upon that claim or doing any work upon it. There were no other cabins or houses or tents or buildings of any kind upon the claim. A man by the name of Louis Johnson and another man by the name of Axel Vernon were living off and on in the cabin with me. I do not know how long the cabin had been there. The first time I saw it was when I went there to sleep. I saw it several years afterwards.

Cross-examination.

Q. That cabin that you are talking about is what was known as the Caribou cabin, put there by Roland

(Testimony of Andrew John Langstrom.)

Sutherland, wasn't it? A. I don't know.

Q. Just step over here and show me where that cabin was, on this map. (Plaintiff's Exhibit "A" for identification.) A. Yes.

(Witness continuing:) The cabin was about 350 feet from the bunch of stakes at the southwest corner of the Grant claim.

Q. Just put the pointer where you think that cabin was. A. What is the scale of this map?

Q. 60 feet to the inch. Every inch from here will be 60 ft. A. Yes.

Q. Show us where it was, just approximately, where you think [54] the cabin was.

(Witness indicates.)

Q. Just hold the pointer there and I will make a mark there. A. Yes.

Q. I will mark it X in a circle, that is the cabin where you and Mr. Louis Johnson slept? A. Yes.

Q. And that wasn't inside of the ground of what is known as the Grant claim, this being the corner of the Grant claim on the map, you don't contend that you slept inside of the boundaries of the Grant claim?

A. No, not at that time, we didn't know anything about the Grant claim.

(Witness continuing:) I never heard of the Jerome Fraction and don't know whether the cabin was within the boundaries of the Jerome Fraction or not. The Pioneer Company boys told me that I was living on Bench No. 1.

Q. Now, Mr. Langstrom, is it not a fact that in the winter of 1903 and 4, the months of December and

(Testimony of Andrew John Langstrom.)

January, when you were living there, Mr. Hopkins and his partners had a cabin about where I am pointing, near the railroad track, and not to exceed 1000 feet from where you were? A. What time?

Q. The time you were sleeping there in that cabin?

A. There were some people living east of where we slept.

Q. East of the present railroad track?

A. Well—

Q. And about east of the Moonlight springs, were they not? A. Yes, I guess so, kind of northeast.

[55]

Q. Now, all of the time you slept there didn't some men take out a dump with a windlass on the ground about where I am pointing, here near the railroad, between figure "1" and the letter "C," in December 1903 and January, 1904?

A. I know when I got to the cabin in the evenings it was mostly dark, but I noticed the windlass and a very little amount of dirt coming up sometimes.

Q. You saw them hoisting dirt?

A. I saw them working with a windlass but I was not up there.

(Witness continuing:) I did not know Mr. Hopkins and I did not know Mr. Muther. I never went over and talked to them. I didn't know the lines of the claim at that time.

Q. Now, with reference to your drilling, you crossed, as I understand your evidence, the pipe-line near the letter "S" on the map, near the bunch of stakes as shown on the map as the letter "S," across in this direction?

(Testimony of Andrew John Langstrom.)

A. This is the telephone, what is marked the telephone line?

Q. Yes. A. Crossed north.

Q. Will you take a pencil and draw a line where you crossed?

(Witness does so.)

Q. Draw a line across the pipe-line and the telephone line, as shown there, draw it pretty plain, so it can be seen?

(Witness does so.)

(Witness continuing:) We went this way. I don't remember whether we drilled any holes before we turned. I don't remember.

Q. Did you know at that time, Mr. Langstrom, where the line [56] of the Grant claim was and where the line of the Lyng claim was? A. No.

Q. Did you have any orders from Mr. Stevenson or Mr. Lindeberg or from the Pioneer Mining Company, to drill across any particular line?

A. No, I didn't.

Q. Did you go on there of your own accord without any instructions?

A. No, I got instructions where to drill all the time, and Charlie Johnson went along with me and showed me where to dig the holes, and I pointed out to Mr. Brower where to drill.

Q. Why did you follow this line from S to U?

A. Because Charlie Johnson told me.

Q. Was that the only reason? A. I don't know.

Q. Wasn't it pretty wet below that dam?

A. It was wet.

(Testimony of Andrew John Langstrom.)

(Witness continuing:) Johnson said like this, put a hole here, and put a hole there, and a hole there. (Indicating.) We went along further and he said put another hole here and so on.

Q. You don't know how close that dam is to being on the line between those two claims? A. No.

Q. Did you pay any attention at that time to whether or not anybody else had drilled there just prior to your going out there in 1907? A. No.
[57]

(Witness continuing:) I don't remember whether or not Mr. Woods and some other men drilled in that vicinity that same year or not, they might have done so without showing any more marks. I did not make any examination at that time whether or not there were any cabins on the Grant claim. When you are on the lower end of the claim owing to the nature of the ground, you can't see anything on the upper end. It is hard to see very far. I am mining at the present time out on the tundra, for myself.

Redirect Examination.

Q. About how far did you start in to drill from the penstock, which way from the penstock?

A. I didn't pay very much attention to the distance, but it must have been—I never paid any attention to the penstock, I cannot tell exactly how far it is. The pipe-line is lying there yet. When I was out there the other day I found the place where we crossed the pipe-line by the marks where the drill had gone, and I saw the pipe where it had caved off, and the telephone pole.

Testimony of Levi Mathieson, for Plaintiff.

LEVI MATHIESON, being first duly sworn, testified as follows:

I live on the Sandspit in Nome. My name is Levi Mathieson. I have lived in Nome since the spring of 1909. I am a miner and have been employed by the Pioneer Mining Company. I worked for the Pioneer Mining Company last year, in the summer and fall. I am acquainted with the placer claim known as No. 1 Bench Moonlight. I got acquainted with it last fall when I was there working on it in the first part of November. I think it was the 6th in the morning when I started to work. I [58] worked upon it until the 15th sinking prospect holes. I sunk two prospect holes, the first one was about 15 feet deep and the other one was about 30 or 35 feet deep. These holes were a little way up from the southeast corner. The second one was about 125 or 130 feet from the southeast corner.

Q. Who sent you to do the work there?

A. Mr. Stevenson did.

Q. Was Mr. Stevenson out there on the claim while you were working there?

A. He was there a few times.

Q. What did he do out there?

A. Why asking how everything was going on, how far we was down and so on.

(Witness continuing:) While I was there from November 6th to November 15th, 1910, Harold Nelson was with me working there.

Q. Aside from Harold Nelson and Louis Steven-

(Testimony of Levi Mathieson.)

son, did you see anybody else on that claim during the time you were working?

A. Not except Mr. Bossi the foreman for the Pioneer Mining Company at that time.

Q. Were you in a position, while you were working on that claim, to see anybody else that might have been working on that claim?

A. No, sir, not at that time, while we were working there was nobody else except we two, Mr. Stevenson and Mr. Bossi.

(Witness continuing:) We were sinking the holes with pick and shovel, bucket and windlass, a cable and a boiler.

Cross-examination.

Q. Mr. Mathieson, do you know where the Grant claim corners [59] are?

A. I am not very well acquainted with the Grant claim.

Q. Do you know Captain George Smith?

A. No, sir, I don't think I do.

Q. Do you know a red cabin out there on the claim?

A. I don't believe I do. I was working on the Oakland claim near the Grant claim the other when you were out there.

Q. You know where the red cabin is on the Grant claim, over on this portion? (Indicating.)

A. I don't know.

Q. You know there is a red cabin there?

A. Yes, sir.

Q. Would it be in this position, on the brow of this hill? A. Just about there.

(Testimony of Levi Mathieson.)

Q. Inside of what you call Bench No. 1?

A. Yes, sir.

Q. You say you were working down here towards the southeast corner of Bench No. 1 what you call the southeast near point letter "V"? A. Yes, sir.

(Witness continuing:) The place where we dug the second hole I indicate on Plaintiff's Exhibit "A" by the word "second" with a circle drawn around it, and the place where we dug the first hole by the word "first" with a circle drawn around it. These holes were dug between November 6th and November 15th, 1910.

Q. Neither of those shafts that you dug is within the ground in controversy in this lawsuit?

Mr. COCHRAN.—Objected to. The map speaks for itself.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed. [60]

Q. Did you see a man living at that time in that red cabin? A. Not at that time.

Q. Will you swear that there was no man living at that time in that red cabin?

A. There was no man at that time.

Q. Did you go up to the red cabin?

A. No, I was not up there.

Q. Is it not a fact, Mr. Mathieson, that a man by the name of Adolph Meyer had been working at that cabin since the 26th day of October, 1910, and was working out there up to the time this suit was started, living in that cabin?

(Testimony of Levi Mathieson.)

A. No, sir, not while I was there.

Q. How long were you there?

A. From the 6th to the 15th of November.

Q. Where did you live? A. At Little Creek.

Q. How long were you working at the time?

A. Ten hours.

Q. Each day? A. Yes, sir.

(Witness continuing:) I was on the windlass and Harold Nelson was down in the hole. I didn't have any interest in that claim other than just doing the work for wages. I did not know the boundaries of the claim. I saw a few stakes, looked at them, but that was since the lawsuit started.

Q. You didn't know at the time you were working there about the boundaries?

A. Mr. Stevenson showed me one of the stakes.

Q. Isn't it a fact that you were doing the assessment work on what is known as the Jerome Fraction?

Mr. COCHRAN.—Objected to as immaterial.
[61]

The COURT.—Objection sustained, to which ruling of the Court the defendants then and there excepted, and the exception was allowed.

Redirect Examination.

Q. Now, after you were through working on No. 1 Moonlight, where did you go next to work?

Mr. GILMORE.—Objected to as not redirect.

The COURT.—Objection overruled, to which ruling of the Court the defendants then and there excepted, and the exception was allowed.

A. We took our boiler, pulled it with a horse team,

(Testimony of Levi Mathieson.)

and went over east, a little east below, and went right across the track east of the claim.

(Witness continuing:) I should say about five or six hundred feet. We were there the last part of the month of November. From the place that we were then working we could see the upper part of the Moonlight Bench No. 1 but not the lower part. We could see the red cabin plain.

Testimony of Harold Nelson, for Plaintiff.

HAROLD NELSON, a witness on behalf of plaintiff, being first duly sworn, testified as follows:

My name is Harold Nelson. I have lived in Nome since 1908. I came from Seattle. Have been in the country four years. I have worked for the Pioneer Mining Company. I worked for them last summer and last fall. I am acquainted with No. 1 Bench Moonlight. I worked on it last fall, in 1910. I worked on it from the 6th day of November to the 15th of November, with Levi Mathieson sinking two shafts; one of them about 15 feet [62] and one about 35 feet. We used a bucket, pick and shovel, windlass and cable.

Q. Was anybody else on the claim there when you were there?

A. No, except Mr. Stevenson, manager of the Pioneer Mining Company at the time, and the foreman of the Pioneer, Mr. Bossi.

Q. Did you see anyone else upon Bench No. 1 Moonlight at the time you were there?

A. I did not.

(Testimony of Harold Nelson.)

Q. Was anyone working on that claim except you and Mr. Mathieson? A. No.

Q. You said Mr. Stevenson was on the claim?

A. Yes.

Q. What was he doing, do you know?

A. Oh, he showed us where to put the holes.

Q. What else did he do? A. That is all.

Cross-examination.

Q. Mr. Nelson, you worked in the same two shafts with Mr. Mathieson? A. I did.

Q. Did you do any other work at that time on that claim? A. No.

Q. Those are the two shafts that he has indicated near the letter "V" on the map? A. Yes.

(Witness continuing:) I worked down in the shaft underground below the surface most of the time. I saw one stake when I was working out there, down near where we were working. I don't know anything about the stakes of the claim, and I paid no attention to them. [63]

Q. Was anybody living out there in that red cabin at that time? A. There wasn't nobody there.

Q. You didn't pay any attention to it, you didn't go up to the cabin? A. No.

Q. The cabin was about a 1,000 feet away from where you worked? A. Yes.

Q. You didn't know that the red cabin was on the same claim that you were working on? A. No.

(Witness continuing:) I have been working for the Pioneer Company for three years off and on pretty nearly all the time, and so has Mathieson. Mathie-

(Testimony of Harold Nelson.)

son and I have been doing assessment work around the country for the Pioneer Mining Company and dug holes where we were told. We didn't pay any attention to stakes we dug where Mr. Stevenson or anybody else of the Pioneer told us to. It isn't our duty to look up stakes or see if we were within the boundaries of any claim.

Redirect Examination.

Q. You have been out on the claim recently, have you not? A. Yes.

(Witness continuing:) Was there two days ago. At that time I went around the claim to see where the stakes were and examine them.

Q. At the time you worked out there you say you used a thaw? A. Yes, sir.

Q. How much of the time were you out of the shaft while you were thawing? A. Three hours a day.

Q. And you came up out of the shaft for lunch every day? A. Yes, for dinner. .[64]

Q. Now, during the time you were not down in the shaft, did you look around to see if anybody was nearby? A. No.

Testimony of Louis Stevenson, for Plaintiff.

LOUIS STEVENSON, a witness on behalf of plaintiff, recalled, testified as follows:

At present I live in Nome. Have lived here since 1901 except for two winters when I went out to the states. I have been mining; have been assistant manager for the Pioneer Mining Company most of the time, and during the winter I have been winter manager. In the winter I have general supervision of

(Testimony of Louis Stevenson.)

the work, and in the summer time I have been kept pretty busy in the office most of the time, keeping time, taking care of the gold, paying the men, ordering provisions, and while Mr. Lindeberg has been absent of course the management has been up to me in the summer time the same as in the winter time. I have the custody of the books and papers of the Pioneer Mining Company.

Q. I will ask you, Mr. Stevenson, what this paper is that I show you at this time?

A. It is the original location notice of Andrew Jensen, the way I understood it to be when he got the papers.

(Witness continuing:) I first saw this paper in 1903 and have seen it off and on since. I think I have seen it every year when I have looked through the old papers. I have run across it several times. I could not state the day when I saw it last. I handed the paper to you this morning after I had looked it up. I have never seen any other notice of Andrew Jensen's. The [65] Pioneer Mining Company came by this paper in the fall of 1903 from Mr. McKay, I believe. It was received from Mr. McKay by the Pioneer Mining Company with the deed from him. I graduated through the grammar school in San Francisco, and then I went to business college. While I have been in the employ of the Pioneer Mining Company I have had considerable experience with handwriting and the signatures of various people, to a certain extent. While I was outside one winter I went to Europe, and one winter I spent in

(Testimony of Louis Stevenson.)

the Scandinavian-American Bank. I worked in four or five different departments in the bank. I had considerable experience in recognizing handwriting.

Q. I show you the signature of Andrew Jensen to his deposition and having observed the same state whether or not the signature to the notice is in his handwriting. A. It is the same.

Mr. SCHOFIELD.—At this time we desire the instrument marked for identification, and will introduce further expert evidence with reference to the handwriting, and also the endorsement thereon, it being in the writing of G. W. Price, at that time deputy recorder of this district. We desire at this time to have it marked for identification, we don't want any question about the identification of that instrument.

The COURT.—It may be marked "I" for identification.

Q. Mr. Stevenson, are you acquainted with the placer mining claim known as Bench No. 1 Moonlight? A. I am.

(Witness continuing:) The first time I knew anything about it was in 1902. I knew the Gadd brothers were there doing some work; they used to come to Discovery, Anvil, and they got some meals from us; that was in 1902 the latter part of the season. I saw them over there once. They were in the willows. [66] You know there is a kind of offset there on the claim, on the northerly part of the claim. I would say it was northerly, on the northerly half of the claim. They were sinking a hole when I saw

(Testimony of Louis Stevenson.)

them. I don't remember their first names.

Q. Can you point out the spot on the map?

A. Not the exact spot, I couldn't.

(Witness continuing:) I do not know how long they were working there at that time, the number of days, I couldn't tell.

Q. Did you see any other work done on that claim during the year 1902?

A. Well, there was an old dam that was built there I believe in the spring of 1902.

(Witness continued:) That dam is just east of the line of Bob Lyng's Moonlight claim. The dam was built by the Moonlight Water Company. The Pioneer Mining Company received a deed to that property from McKay in 1903. We had two men work there from September 17th or 18th to October 3d the time we closed down. In 1903, they were prospecting for the Pioneer. I was in court when Mr. Langstrom testified to having occupied a cabin on the southern half of the claim. The cabin belonged to the Pioneer Mining Company. It was put on No 1 Bench Moonlight on Thanksgiving Day, 1903, and it remained there something like three years from that date. It was put there for some of our men to live in, some of our working men, and it was occupied from time to time.

Q. Besides the work that you mention having been done by two men on the claim in 1903, was there any other work that you recall?

A. Not by the Pioneer Mining Company. [67]

(Witness continuing:) I was upon the claim my-

(Testimony of Louis Stevenson.)

self during the year 1903. I went with Mr. Lindeberg by Moonlight dam and over that way. He was going to show me some claims that he has or intended to take over from P. D. Winter. The Wild Goose Mining Company had sunk a shaft over there east of the railroad track, and they had been panning, and he took me over to show me, and we went up where those men were working at the time. The hole that the Wild Goose had dug was on the Winter Fraction. I did not examine the work that the men did that I mentioned.

Q. In the year 1903 did you build any ditches?

A. No.

Q. That is with reference to property in and about Bench Claim No. 1 Moonlight? A. Not in 1903.

(Witness continuing:) I said I was acquainted with Bench No. 1 Moonlight in 1904. I first observed the stakes of that claim in the fall of 1903 after the boats had gone out that fall, I guess it was either the latter part of October or first of November, I went there, went over all the claims out in that neighborhood that we either had an option on or owned direct, to look up the stakes. I found the stakes at the corners of Bench No. 1 Moonlight. There were 4 stakes, 4 corner stakes. They were marked M. B. and then were numbered. They were 2 by 4 and then there were some old willows, and I saw that they were marked also. I would say the stakes were 2½ to 3 feet above the ground. Some of them were driven down, and some of them had a mound around. The first one I found was this one at point "V" on the

(Testimony of Louis Stevenson.)

map. I came over this way where the Winter Fraction was and found the Winter Fraction stakes. I came over this way and found the Winter Fraction stakes and I found the Moonlight stake in here at "V"; then I walked up here looking [68] at stakes and found that one. I was wandering in here and found several bunches of stakes over this way, to "Q" and then a bunch of stakes here at point "P."

Q. Confine yourself to Bench Claim No. 1.

A. All right, I found a stake at letter "Q," and then I also found a stake at letter "W."

Q. What other stakes than 3x4 or 2x4's was it?

A. 2x4.

Q. Did you find at the corner "V" if any?

A. Well, there was one or two more stakes, but I didn't pay any attention. When I found what I wanted to find I did not look very carefully for any more.

Q. At the corner letter "N" what stake did you find there besides the 2x4?

A. There were several stakes, and there were two bunches there pretty close together, but I didn't look at any other stakes very closely. I was just trying to find what I was looking for. I found a stake marked M. B.

Q. What character of stakes were the others you found at point "W"?

A. There were several old willow stakes there.

(Witness continuing:) There was a mound there, because there was a little hole dug there, they had

(Testimony of Louis Stevenson.)

made a mound with it; the stakes were mounded up at that point. I was out at that hole recently. I don't remember of finding any more than one stake at point "Q." At point "W" there was a good many stakes down there. The Winter Fraction stake was there and some willow stakes. I have been on the ground frequently since 1903 and I have observed stakes at those corners since that time a good many times. The stakes that I observed in 1903 are still at [69] the respective corners with the exception of the one at the point "Q" that was dug up when we put our ditch there. That was placed up in our ditch; I don't know whether it might have been moved a few feet, I could not say as to that. It was out for a year or two and then put back. That was done in 1904. It was lying in the ditch bank for a while, but was put up there afterwards.

Q. What changes, if any, were made with reference to the stakes at point "W" since 1903?

A. They have been mined out a long time ago.

Q. What has been done towards establishing and maintaining the corners?

A. They were reset; I don't know whether it was in 1909 or 1910; it has been covered up since with the high tailings. Mr. Blake was out there a little while ago to put up the stake, but he didn't have his notice.

Q. What work was done on that claim in the year 1904, if any? A. We dug the ditch through there.

Q. What kind of a ditch is that?

A. It is a ditch that I believe is about 6 feet wide

(Testimony of Louis Stevenson.)

on the bottom and 10 feet wide on the top, and about 3 feet deep.

Q. And it extended to what point from what point across the claim?

A. It extends from the northeast corner across the claim, it don't go straight.

Q. It follows its contour around? A. Yes.

Q. Is that ditch marked on that map?

A. Yes.

Q. What system of ditching is that, if any? [70]

A. Well, sometimes it is called the Anvil ditch and sometimes the Moonlight ditch. It has been going by two names. I don't know what name they carry it on the books.

Q. Calling it the Anvil ditch, where has that ditch got its intake?

A. Lower end of No. 4 Above Anvil.

(Witness continuing:) It runs down the right limit and is taken across Anvil creek with a 30-inch pipe-line at the lower end of No. 1 Above Discovery. The eastern terminus of the ditch is on what is called the Carlson claim, about 300 or 400 feet from the letter "N."

Q. What was that ditch built for?

A. It was built to mine our properties below the ditch.

Q. Well, now, specifically, what property?

A. All the claims we have that lie under the ditch.

Q. Under the ditch? A. Below.

Q. Now, for the purpose of using these waters, what have you done by way of erecting penstocks and

(Testimony of Louis Stevenson.)

pipe-lines on the claim?

A. We have been building and maintaining several penstocks and several pipe-lines over this claim.

(Witness continuing:) Within the boundaries of the claim at the present time the first penstock was put in over here by the letter "Q," and the first pipe-line was a pipe-line that comes from the upper ditch and goes down into the lower ditch right in front of this penstock here at the letter "Q" coming right down and following parallel with that one. We use the first pipe-line that we laid over here.

Q. What do you call that upper ditch?

A. Nome River Ditch. [71]

(Witness continuing:) The pipe-line that I speak of as coming down from the Nome River Ditch runs across claim No. 1 Bench just under at the line, I would say. The pipe-line ran down the entire length of the claim. We mined down here in the vicinity of the letter "W." I believe the intake of the pipe-line is about 24 inches and reduces down to 15 or 16 inches. The pipe-line was put in there, I believe, in 1905. I wouldn't say, it was in the fall of 1904 or 1905.

Q. Is it there to-day?

A. Not in the first position we put it in. We have been relaying and changing it mostly every season, every spring.

(Witness continuing:) It is there now in its changed position. The way it works from there may be a little further west. It is within the boundary lines of Bench claim No. 1. The next penstock that

(Testimony of Louis Stevenson.)

we built is not inside of this claim; that penstock is on the Carlson location, near the letter "C." That penstock is near the Anvil Ditch, which leads the water into the pipe. The first pipe that we put in there let the water down to Discovery claim and the Portland Bench on Little Creek. It was a 30-inch pipe and the second one came in over this way south of letter "C" and over to what is 4 here. We ground-sluiced the ground here, and on the Winter Fraction and Moonlight claim beginning with the letter "W" with the pipe-line, coming west here. We had other pipe-lines running across this No. 1 Moonlight. There was one line that came east from the letter "Q" from the Nome River Ditch, running down the entire length of the claim. That was laid there in the fall of 1907 and taken up in the spring of 1910. Then, we had a 30-inch pipe that also comes from Nome River Ditch, and crosses at the penstock, letter "Q" and came over the entire claim. Besides the four that [72] I have mentioned there has been one put in there lately. There is another penstock from which we have used the water on No. 6 McKay Bench. The first line from letter "Q" going south, was either 15 or 16-inch line; then the second one we laid was in the Carlson location; that was a 30-inch pipe; then another 30-inch pipe from the Nome River ditch down through the claim; then from Nome River ditch south through this claim; another 17 or 18-inch pipe-line; then another pipe-line from the penstock in the Carlson location that ran westerly on this claim, and that is a 17 or 18-inch pipe also; it

(Testimony of Louis Stevenson.)

also crossed Bench Claim No. 1 going by the southeast corner of the Bob Lyng claim. Then there was another pipe-line running westerly to the McKay Bench, No. 6.

Q. How long have all of these pipes been continued?

A. Since we laid them in 1905, 1906 and 1907.

Q. What is necessary to be done with reference to the ditch and the pipe-lines each year, if anything?

A. Well, the ditch has to be cleaned out every spring, start in shoveling snow out of it, clean it out, and the pipe-lines have to be relaid more or less. The pipe-lines generally pull apart more or less in the winter time so we have to relay them in the spring.

Q. About how many men and for how long a time is it necessary for them to work to clean out the ditch each spring, as a rule?

A. Oh, well, we used to have 20 or 30 men in the spring.

Q. Confine yourself to this claim.

A. Oh, well, four or five times.

Q. How many men? A. Six to ten men.

(Witness continuing:) I can't give any definite rule for it, [73] because it is different every year; some years we might go to an expense of \$800 or \$1,000 in fixing up the pipe-line and others less, and others more. To lay a 16-inch pipe-line it generally takes four men. To lay a 30-inch pipe-line you have to have six owing to the weight of the pipe. I would estimate the expense every year in working on the

(Testimony of Louis Stevenson.)

pipe-line, would come to from \$1,200 to \$1,500. I know where the conflict ground in dispute in this action is.

Q. What portion of the work you have mentioned is within that conflict ground, that is so far as the work on the pipe-line and ditch is concerned?

A. I think most of it is on the conflict ground.

Q. Have you made an estimate, or can you make an estimate as to the value of the improvements placed upon Bench claim No. 1 Moonlight by the Pioneer Mining Company since they acquired title in the fall of 1903?

A. I have not made any, but I think I could approximately figure it out.

Q. Can you give an approximate statement at this time?

A. Well, I guess if I get a pen and paper—I know about what the cost would be for each foot of pipe-line.

Q. What is the cost of a 17-inch pipe?

A. Well, I would say that it is about \$2.00 a foot.

Q. Laid on the ground?

A. Well, no, that is figuring the cost of the labor to lay it.

Q. A 30-inch pipe, how much would that cost?

A. That would be \$3.00, that is the cost of the pipe on the ground.

Q. A ditch 6 foot bottom, 10 feet on top, how much would that [74] cost per running foot, if you know?

A. I place the cost in the neighborhood of \$1.25 to

(Testimony of Louis Stevenson.)

\$1.50 a foot.

Q. Now, during the year 1903 did you see any one else than representatives of the Pioneer Mining Company on this Bench claim No. 1 Moonlight?

A. I did.

(Witness continuing:) There were some men working there the winter of 1903 and 1904. I didn't know them very well. I know at what point on the claim they were working, approximately. They were working in the neighborhood of here (indicating), in the neighborhood of where it says No. 1 on the map. (Plaintiff's Exhibit "A.") They were there with a windlass working there during the winter prospecting. I talked with them. I went there and told them to vacate, that we owned the ground. They said they were not doing much, they were just prospecting.

Q. Did they vacate? A. They did not.

Q. In the year 1904 what work besides building that ditch across there did you do on the claim?

A. We sank one prospect shaft, December 10th to 16th, to bedrock, using 11 sacks of coal, and charging up one day's teaming. That was sunk in the southwest portion of the claim, Bench No. 1 Moonlight. I don't remember if there was any other work done there that year.

Q. Did you see any other person upon that claim during the year 1904? A. Yes.

Q. When?

A. In the fall of 1904, Mr. Bard, the attorney, had

(Testimony of Louis Stevenson.)

a lay [75] there and was there prospecting in 1905. He told me he had a lay on the Grant claim. I talked with him several times. I told him we owned the ground, and to vacate.

Q. Did he vacate? A. He did not.

(Witness continuing:) I was on the ground when the shaft was sunk in 1904. I don't recollect whether there was any cabins or tents upon the claim at that time or not.

Q. Now, coming down to the year 1905, what work was done upon Bench claim No. 1 Moonlight by the Pioneer Mining Company that year?

A. That is the year that we built the penstock at letter "Q."

(Witness continuing:) And also laid the pipeline down near the southwest corner, near "W." I believe we laid the one coming from the Nome River ditch, the 18-inch pipe that leads down to the penstock at the letter "Q." In 1905 besides repairing ditches we sank one shaft to bedrock south of the Bob Lyng claim. I was on the claim personally myself. We were ten days from December 15th to December 25th in doing the work. I don't recall seeing anybody else on the claim at that time. To my best recollection we commenced using water through the Anvil Ditch in 1906. We ground-sluiced near the southwest corner with water out of this ditch and partly from the upper ditch, from Nome River Ditch. I could not say to what extent we ground-sluiced because I haven't got any survey. We ground-sluiced out towards No. 2 Moonlight in the southwest corner

(Testimony of Louis Stevenson.)

of Bench No. 1; besides ground-sluicing on the corner of the claim, we sank a shaft in November, a little east from the southwest corner, it was in November. I don't remember whether we did any other mining work on that portion of the claim that year or not. I was over the claim a great deal in 1906, almost every day all summer and [76] in the fall and to my recollection I did not see anybody else than representatives of the Pioneer Mining Company upon the claim during that period. My visits were such and my position was such that I could have been apt to have seen them if there had been anybody there. During that year no one had a cabin on the claim.

Q. Now, coming down to the year 1907, what work was done upon the claim?

A. Of course, in the spring we fixed up the ditch and our pipe-lines, and then we ground-sluiced and mined in the southwest portion of the claim.

(Witness continuing:) Then, we drilled there from September 15th to the 28th and sank 17 holes. Mr. Brower did the work. He had Mr. Langstrom with him. I went there frequently while he was drilling there and while Mr. Langstrom was panning. The results of the pannings were reported to Charlie Johnson. I had access to the reports of the pannings all the time. Besides this drilling there was ground-sluicing and mining in the southwest corner. The drilling was done over in this corner up here. They drilled first in the direction, first on Fraction 5 and 6 Bench; then south of "Q" and came southeasterly on the east side of the Bob Lyng's claim and came

(Testimony of Louis Stevenson.)

down here, and following then east of this line, east of the easterly line of the Bob Lyng's claim, and then we came on down this way, and then we crossed over this way about 20 feet I should say, west from the southeast corner of Bob Lyng's claim and came over in through here, and then drilled some holes in V and A, drilled two holes east of the railroad tract, V and A. I didn't see anybody else on the claim except the Pioneer Company's representatives. [77]

Q. During the year 1907, was anybody else upon the claim so far as you know? A. Yes.

Q. Who?

A. There was a drill in up here somewhere, did some drilling in the spring.

Q. Do you know whether that was on the conflict ground? A. Partly so and partly not.

Q. Do you know how long they were actually using the drill on the ground?

A. No, I wouldn't say in the neighborhood of six to ten days. The drill was there longer than that.

Q. Now, coming to the year 1908, Mr. Stevenson, what work was done by the Pioneer Mining Company on this claim, No. 1 Bench Moonlight?

A. We cleaned out the ditch and fixed up the pipelines, and then we were ground-sluicing, and mining going on in east, and we also sank a shaft there in the fall of 1908.

Q. Where was that shaft sunk?

A. I wasn't here at that time, so I couldn't state.

(Witness continuing:) I went to the states in the fall. I believe they were shoveling in at that time,

(Testimony of Louis Stevenson.)

coming on up that way. I would not say how much mining we did do there in 1907 and 1908 because I don't remember; we made no survey, but we were coming on up every year. I can state definitely the way we mined in 1909. I did not see anybody in possession, working or occupying that claim besides representatives of the Pioneer Mining Company during the time I was there in 1908. [78]

Q. Now, in the year 1909, what work was done upon the claim?

A. We were ground-sluicing and mining in 1909.

(Witness continuing:) We used a self dumper, hoisting there at that time, and that was the time we were sluicing east of where the corner was, east of the point "W." Besides this mining and ground-sluicing east of point "W" we did not do anything except as we had to do every spring, clean out the ditch and the pipe-line. There was no prospecting done to my recollection. I was outside in the winter of 1908 and 9 and got in in June. There was nobody on the claim in June.

Q. Now, in the year 1910, what work was done upon the claim by the Pioneer Mining Company?

A. We were doing the usual thing, cleaning the ditch, fixing our pipes, ground-sluicing, mining in the southwest corner.

(Witness continuing:) In 1910 we were running self dumpers and a hoist on the claim.

Q. And during the year 1910, how much work had been done in the matter of ground-sluicing and mining on the claim?

(Testimony of Louis Stevenson.)

A. We ground-sluiced quite extensively, but regular mining we did not do much in 1910. We may have taken some of the ground embraced within the claim, but most of the ground we took out was taken out of the Winter Fraction and No. 2 Moonlight.

(Witness continuing:) I am acquainted with Levi Mathieson and Harold Nelson; they worked for the Pioneer Mining Company in the winter of 1910 prospecting on several claims in the vicinity of Moonlight. They worked on Moonlight Bench No. 1 from November 6th to the 15th, prospecting and sinking shafts. The first one was about 15 feet deep and the second was about [79] 34 feet to my recollection. I had Mr. Bossi do the panning. I was out there personally while they were there. I was there on the 6th; I was there on the 7th but I could not say whether I was there on the 8th, but I was there again before the 15th. I lived over near Little Creek so I was up there all the time. The day they went further over there I showed them where to go on the 15th.

Q. During the time they were sinking the shaft, there was nobody else on Bench Claim No. 1 Moonlight? A. No, sir.

Q. Did you have occasion to observe particularly whether there was at that time? A. I did.

Q. Why?

A. Well, I think you told me I should look out and see if there was anybody there or not.

Mr. GILMORE.—I move to strike out the answer as hearsay and not responsive.

The COURT.—Motion denied, to which ruling of

(Testimony of Louis Stevenson.)

the Court the defendants then and there excepted and the exception was allowed.

Q. There was a cabin upon the claim at that time, do you know what cabin that was? A. I do.

Q. Whose? A. That was McCumber's cabin.

(Witness continuing:) There wasn't anybody occupying that cabin at that time, while they were working there. I did not see anybody working on the cabin during that period of time.

Q. Would you have seen them if they had been working there [80] at that time?

A. I may and I may not.

(Witness continuing:) I know approximately when the cabin became occupied that winter, it was some time after December 20th.

Q. When was this action commenced, if you know?

A. We commenced to work there on Sunday, which was the 6th, I believe the action was started the next day, the 7th.

(Witness continuing:) I had a talk with McCumber when on the ground in the fall of 1909. I don't remember whether I went to see McCumber or not in 1909. I spoke to McCumber several times last fall before this suit was commenced. I could not state the exact time, I haven't got the markings down, at least I have an old memorandum-book which I haven't found; I used to mark down, but I haven't found it, so I couldn't say the dates that I spoke to McCumber.

Q. I wish you would state, Mr. Stevenson, what waters were used in mining and ground-sluicing

(Testimony of Louis Stevenson.)

Bench claim No. 1?

A. Waters from the Anvil Ditch, also water from the Nome River Ditch.

Q. Taken through what pipes?

A. Running over this very claim.

Q. Did the pipes run full when you were using them? A. Sometimes and sometimes not.

Cross-examination.

The first time I ever heard of this Bench Claim No. 1 Moonlight was in 1902. I heard about it from the Gadd boys, who were doing some work. I couldn't say whether the Pioneer . [81] Mining Company had an option on the ground then or not. I did not pay any attention to stakes in 1902. I know the Gadd boys were on that ground. I had not looked up the stakes at that time. The first knowledge I ever had of this claim with reference to its boundaries was in 1903, four years after it was alleged to have been staked. In 1903 the claim was marked by survey stakes, 2x4 board stakes. I do not know of my own knowledge who put them there. The survey stakes were scribed M. B.

Q. You said there were some old willows there that had no writing on them?

A. I could not see any.

Q. You don't pretend to tell Mr. Stevenson, who put those willows there? A. No, sir.

Q. Or when they were put there?

A. No, sir.

(Witness continuing:) I made my investigation

(Testimony of Louis Stevenson.)

after the boats left in the fall of 1903 and found four scribed board stakes. I believe the first time I ever heard of the Grant claim was in the winter of 1903 and 1904, a little after, maybe a month, something like that, after I observed the No. 1 Bench Moonlight I did not at that time become familiar with the west end stakes of the Grant claim. I now know where the Grant claim is. I first got acquainted with it about the time Bard was mining there. I tried to find out from him who claimed the ground but he wouldn't tell. It was after 1905 some time. I know to-day where the ground in controversy is.

Q. Outside of the testimony of the claims of work done by the Pioneer, have you seen men prospecting or digging shafts or tunnels or drifts on the ground in controversy [82] since 1903, how many times?

A. 1903 and 1904 that was the first time, and then by Bard 1904 and 1905, and then that drilling that was there in 1907, and then by McCumber's men, I understood it was his men.

Q. During all the time you saw that work done you knew that those men were claiming the ground under what is called the Grant title?

A. Well, the first boys—

Q. Just yes or no? A. Both yes and no.

(Witness continuing:) In 1903 and 4, in the winter, the men were prospecting with a windlass.

Q. Were they working out where they could be seen by anyone passing in the country?

A. Yes, sir.

Q. Open? A. Yes.

(Testimony of Louis Stevenson.)

Q. And how long did they work there during that winter? A. That I could not say.

Q. What is your best judgment of the time?

A. I should think they must have been there three, maybe five months.

Q. And do you know a man by the name of W. A. Hopkins? A. Yes.

Q. The man that Mr. Lindeberg referred to in his deposition as being a dangerous fellow?

A. Yes.

(Witness continuing:) I don't know what he did, he was there within the ground in controversy. He had some men working [83] there, not very many. I know John Rieck, also Oscar Margraf. I did not see John Rieck working on the ground in controversy in the spring of 1904 or winter of 1903 and 4. I lived in Nome in the winter of 1903 and 4. Rieck and Margraf could have done some work there without my knowing it. I knew J. C. Muther in 1904.

Q. Did you see Mr. Muther working there in the year 1904, summer, fall and winter of 1904, and spring of 1905, on the ground in controversy?

A. Yes, sir, talked to him several times.

(Witness continuing:) I believe Muther lived in a cabin on No. 2 East Fork Moonlight.

Q. Now, isn't it a fact that he had a cabin down in here (indicating) in the winter of 1904 and 1905, near the figure 1, right near the railroad?

A. Well, I would place it a little further east.

(Witness continuing:) I believe they were living on No. 2 East Fork.

(Testimony of Louis Stevenson.)

Q. Now, Mr. Stevenson, how long did Mr. Muther work there in the fall of 1904 and spring of 1905 on the ground now being litigated?

A. They might have been there five or six months.

Q. How big a crew of men did they have working there?

A. Well, I don't know, I wouldn't state that, five or six men.

Q. Didn't he have seven or eight at one time working there with three windlasses?

A. I don't think he had three windlasses.

Q. Did you see any dumps taken out that winter by Mr. Muther? A. What?

Q. The winter of 1904 and spring of 1905?

A. Yes, I saw there was a little. [84]

Q. How big a dump did he take out, Mr. Stevenson? A. I don't know.

(Witness continuing:) The dam that was built by the Moonlight Water Company in 1902 was two or three feet higher, as shown on Plaintiff's Exhibit "A" for identification, from S to U, and close down to U it got closer to the line, two or three feet in on the edge of the Grant claim. I don't know whether it was their intention to put the dam on the line between the Lyng claim and the Grant claim or not.

Q. Now, this drilling that was done by Mr. Brower and his assistants, the holes that were drilled between S and U on the ground, how far east of that dam that you described as being built by the Moonlight Water Company, were those holes?

A. Some of them were on the east side of the Lyng.

(Testimony of Louis Stevenson.)

Q. Some of them touched the dam, the back of the dam? A. Yes.

(Witness continuing:) They would have been two or three feet east of what we consider the dividing line between the two claims, and there were six or eight holes drilled between S and U and aside from those six or eight holes, there is one not very far from S and two further up. Our drill books show the first one to be about 30 feet deep and the second one 16 feet. I have had a good deal of experience in drill work while assistant superintendent for the Pioneer.

Q. How long would it take the ordinary drill man to dig a hole 16 feet deep in that character of ground?

A. That depends, sometimes a half a day and sometimes a whole day.

(Witness continuing:) He might or he might not be able to drill [85] a 30-foot hole in that character of ground in a day. The average of the holes was 32 feet. The bedrock does not crop almost to the surface just above S but it gets shallower near S. Further west from S limestone bedrock comes within 8 or 10 feet of the surface. We had no drill hole shallower than 16 feet. It might have taken Brower two or three days to drill the two holes near Q and the one near S, and when I say days I mean ten hours, but if he was drilling night and day with two crews, he might do it in thirty-six hours. The holes between S and U to my best recollection, were between 32 and 34 feet deep, getting deeper towards the point U.

Q. What was the character of the ground between

(Testimony of Louis Stevenson.)

S and U west and below the old dam that ran through there, the character of the surface?

A. Well, it is tundra, water running through there.

Q. It was soggy and wet? A. Partly so.

Q. A man working there or walking across it would go in to his knees?

A. No, not unless you happened to step in where there was a spring.

Q. There are places between the points S and U of and below this dam, where a man can hardly walk across in gum boots?

A. I walked over there a good many times and never went over my ankles.

Q. That wasn't a suitable place to drill?

A. They could have drilled.

Q. But they didn't? A. No. [86]

(Witness continuing:) In 1903 we had two men prospecting for the Pioneer on the lower end of this Bench No. 1. They worked northeast from the center stake of the Bob Lyng claim. They were prospecting east of the old dam.

Q. Who were the men?

A. I don't remember the names.

Q. I am asking about the Pioneer work?

A. I am talking about the Pioneer work.

Q. What were the names of the men?

A. I don't know.

Q. Did you employ them?

A. I don't think I did.

Q. What time of the year did they work?

A. September 18th to October 3d.

(Testimony of Louis Stevenson.)

Q. Isn't it a fact that at that very time that you are talking about, September and October, 1903, we were taking a dump out there on this disputed area, under defendants' title?

A. I didn't see anybody there at all except our men.

Q. In the fall of 1903?

A. In September when we were there there was nobody else digging there.

Q. You said September and October?

A. To October 3d.

(Witness continuing:) We had a cabin on the claim in 1903.

Q. Where was that cabin?

A. Do you want me to show you on the map?

Q. Yes, step to the map and show where that cabin was, mark it, write the word cabin and draw a circle around it.

A. I think that is where the cabin was, approximately.

(Witness marks cabin on Plaintiff's Exhibit "A" for identification.) [87]

A. (Continuing:) That is approximately where it was, it might have been ten or fifteen feet from that.

Q. That was without the ground in controversy?

A. It was.

Q. Did the Pioneer ever have any cabin or cabins within the ground in controversy? A. No, sir.

Q. At any time? A. No, sir.

Q. Did D. W. McKay, or Mr. Jensen or anyone

(Testimony of Louis Stevenson.)

else that was ever connected with the claim ever have a cabin on the ground in controversy to your knowledge? A. Not to my knowledge.

Q. Do you know a claim by the name of the Jerome Fraction?

A. Well, I know some party jumped a portion and called it the Jerome Fraction.

Q. You do know of such a claim?

A. I know there was such a title.

Q. Just indicate to the Court, please, where the Jerome Fraction is, where you knew it to be?

A. The Jerome Fraction would be in here (indicating).

Q. Just trace it on the map for the Court, commence at any one point where you knew it to be and run around it. A. I have never seen a stake.

Q. The Pioneer Mining Company owns the Jerome Fraction, does it not?

Mr. SCHOFIELD.—Objected to as wholly immaterial, incompetent and not cross-examination.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed. [88]

Q. Mr. Stevenson, is it not a fact that the work done by the men in 1903, by the Pioneer Mining Company, was done in the neighborhood of the letters U and V and W on the map, and that it was done, that all of the work was done for the Jerome Fraction?

Mr. SCHOFIELD.—Objected to as immaterial.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there

(Testimony of Louis Stevenson.)

excepted and the exception was allowed.

Q. Did you personally sign an affidavit, proof of labor, for the year 1903, with reference to the ground known as Bench No. 1, for the Pioneer Mining Company? A. I believe I did, I think I did.

Q. Did you sign an affidavit, swearing to the work that was done on the Jerome Fraction for the year 1903?

Mr. SCHOFIELD.—Objected to as wholly immaterial, not proper cross-examination and incompetent.

Mr. GILMORE.—It goes to the question of the good faith of this location.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

Q. Is it not a fact, Mr. Stevenson, that the cabin you have testified to in your direct examination about being on the lower end of Bench No. 1 in the year 1903, was put there by the owner of the Jerome Fraction and not by the Pioneer Mining Company for Bench No. 1?

A. It is not. I was there, I hauled it over there myself.

Q. Isn't it a fact that that cabin was put there because that ground was then claimed by the Pioneer Mining Company not as Bench No. 1 but as the Jerome Fraction? [89] A. It is not.

Q. Did you make and file for record a proof of labor for the Jerome Fraction in 1904?

Mr. SCHOFIELD.—Objected to as wholly imma-

(Testimony of Louis Stevenson.)

terial and incompetent, and not proper cross-examination.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

(Witness continuing:) I stated in my direct examination that Mr. Lindeberg and I were on the lower end of this Bench No. 1 claim for the purpose of looking at this Winter Fraction, that claim that the Pioneer had an option on. One of the Winter Fraction stakes is at “W” and one of the other stakes is at point “A.”

Q. Then the southerly part of your so-called Bench No. 1 being the part between A, V and W, was embraced within this Winter Fraction location?

A. That was an overlap.

(Witness continuing:) The overlap was 12 or 15 feet; I don't think it was as much as 50 feet, I never had it surveyed. I know a surveyor named E. Franklin Lewis. I never saw him on the ground and don't know whether he made a survey or not. While he was surveying in 1903 I was on Discovery Anvil. I verified the complaint in this action for the Pioneer Mining Company.

Q. Your complaint alleges that Bench No. 1 is 720 feet long on the upper end?

A. I don't remember the complaint.

Q. The complaint also alleges that the description was taken from Mineral Survey No. 608, was that the Lewis Survey? [90]

Mr. LOMEN.—That is assuming something not in

(Testimony of Louis Stevenson.)

evidence. That is misleading. I wish counsel would refresh his memory.

Mr. GILMORE.—So there will be no dispute about it, I will read you from the complaint, Mr. Stevenson: “Bench No. 1 Moonlight and described by metes and bounds as follows: Commencing at Stake No. 1, the northwest corner, from which U. S. Monument No. 2 bears N. $4^{\circ} 27'$ E. 670.2 feet; thence S. $65^{\circ} 2'$ E. 730 feet to stake No. 2.”

A. (Continuing:) If the complaint calls for 730 feet on the upper end it must be wrong. We were only claiming 600 feet.

Q. And if the description says—I am not going to read the whole paragraph to you, it winds up by saying Survey 608 at the bottom of the description in your complaint, if this description is taken from the land office records, Survey No. 608, Mr. Lewis must have surveyed at some other point than Q?

Mr. SCHOFIELD.—Objected to as assuming that Mr. Lewis made a survey.

Mr. GILMORE.—Survey No. 608 in the complaint is in evidence. Mr. Lindeberg testified that he employed Mr. Lewis and Mr. Lewis made the survey. I am trying to break the witness down on the question of the northwest stake. The plaintiff is claiming it in two places, one in the complaint and the other in the map.

The COURT.—Objection sustained. To which ruling of the Court the defendants excepted then and there, and the exception was allowed. [91]

Q. At the point Q you say there is one solitary

(Testimony of Louis Stevenson.)

stake standing on the ground? A. Yes.

(Witness continuing:) There was no mound. The ditch was constructed through there, and the stake was down for a year. I never knew the Pioneer Mining Company claimed the corner at the point P. There was nothing done at the point W on the ground in 1903. The mound at the point W was identical with Bob Lyng's Moonlight stake. The southwest corner of the Bob Lyng claim was, in 1903, where I saw the 2x4 stakes scribed M. B. The stake I took for the Moonlight stake. I don't know whether the old original Jerome stake stood there or not, as I could not find any marking on the willow stakes. I was living in Nome in the winter of 1902 and spring of 1903 in charge of the Pioneer affairs.

Q. Were you in charge of the Pioneer Mining Company's affairs at the time the Moonlight Water Company sued Howard and Doverspike?

Mr. COCHRAN.—Objected to as immaterial, not proper cross-examination.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

Mr. GILMORE.—I offer to show by the witness, if the Court please, that he was out on the ground in controversy in the fall of 1902 and the spring of 1903 and that he saw Mr. Howard and Mr. Doverspike and four or five other men take out a winter dump on the premises in dispute, and that he knew they were working and mining the ground in controversy.

(Testimony of Louis Stevenson.)

Mr. COCHRAN.—I don't think your Honor should pass [92] upon that at this time. The question asked was if he was there when the suit was brought by Howard and Doverspike.

The COURT.—Objection sustained.

Mr. GILMORE.—Will your Honor rule upon the offer made?

The COURT.—I will not.

Mr. GILMORE.—We take an exception to the Court's refusal to rule on the offer. Exception allowed.

(Witness continuing:) I might have been over the ground in controversy in the fall of 1902 and spring of 1903. I did not know Doverspike very well. I knew Howard, I wasn't very well acquainted with him. I knew some men were there; I had nothing to do with the claim, at that time; I never knew that we had anything to do with that claim in the winter of 1902 and 3. In the fall of 1905 and in the spring of 1906 I was on the ground in controversy. I did not see any men working there. I was over the ground a number of times. We were working right below there.

Q. Do you remember about the time Mr. Bard assigned his lease or issued a lease to some Russians that worked there?

Mr. SCHOFIELD.—Objected to as assuming something not in evidence.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

(Testimony of Louis Stevenson.)

(Witness continuing:) I would not deny that the Russians worked there. I don't remember seeing anybody working there in the winter, fall and spring of 1905 and 6. I never saw any cabin on the ground in controversy then. [93]

Q. Now, this Anvil ditch that you talk about digging around there, that was taken there for the purpose of bringing the Anvil water around to use on the Portland Bench and Discovery, that was the purpose? A. Partly so.

Q. That was the main purpose? A. No, sir.

Q. To get the water down there and use it on your mining works wasn't that the reason that that spillway on the side towards the Portland Bench was built?

A. When we built that we didn't know there was to be any Portland Bench.

Q. Yes, but you did know there was gold on the flats around Moonlight? A. Yes.

Q. Before you got it completed pay had been discovered by Mr. Brown in the fall of 1904?

A. It had not.

Q. At that time you didn't assume there was pay down on Moonlight?

A. We did on the southwest corner of the Winter Fraction.

Q. Why did you bring it around to this point, I mean south of the point N, that is the end of the ditch, why was the ditch put in there?

A. I can't give you any special reason.

Q. Wasn't it put there for the purpose of ground-

(Testimony of Louis Stevenson.)

sluicing down here at Little Creek?

A. We have never ground-sluiced at Little Creek.

(Witness continuing:) We have been mining down in the southwest corner of the Bench.

Q. By southwest corner you mean down at point W? A. I do. [94]

Q. And not on the ground in controversy?

A. No, sir.

Q. Have you ever used the water of this so-called Anvil Ditch on the ground in controversy or in dispute, for mining purposes? A. No, sir.

Q. Now, Mr. Stevenson, you told the Court about spending a lot of money every year cleaning this ditch out, shoveling dirt and snow from the ditch. You do the same thing on your ditch clear around to Anvil? A. We do.

(Witness continuing:) There is about 200 feet of the Anvil ditch on the Grant claim not in controversy; that is the part of the ditch that comes in on the corner of the Grant claim across near the railroad track.

Q. You do the same character of work on that part of the ditch that you do on the ditch that is inside of the ground in controversy? A. Yes, sir.

Q. You don't claim ownership of that piece of ground of the Grant claim by virtue of your ditch running across there and the work that you do every year? A. No.

Q. Now, this Anvil ditch runs across several claims that the Pioneer doesn't own? A. It does.

(Testimony of Louis Stevenson.)

Q. It runs across Mr. Hepburn's claim over here?

A. Yes.

Q. You don't claim that? A. No, sir.

Q. And you clean that out every year?

A. Yes, sir. [95]

Q. And it costs you the same per lineal foot?

A. It does.

Q. Those pipe-lines that you told Mr. Lomen about, they run across the Grant claim that is not in dispute? A. Not any of those mentioned.

(Witness continuing:) The surveyor has the pipe-line dotted as running from the upper ditch, it is not there now. It used to be.

Q. You don't claim this piece of the Grant claim by virtue of that pipe-line running across there?

A. No, sir.

Q. There are a great many of your pipe-lines that run on ground that is not in controversy?

A. There is out on the Miocene ditch.

Q. From the Miocene ditch down to the lower levels, where you are mining you have pipe-lines crossing claims owned by the Pioneer by virtue of the pipe-line? A. No, sir.

Q. Isn't it a fact that those pipe-lines are laid across there for the convenience of mining on the lower levels down here (indicating)?

A. Well, to mine the other claims and this claim also.

Q. Wasn't that the purpose of putting those pipe-lines across there, to get them down to where you are mining down below on the lower claims?

(Testimony of Louis Stevenson.)

A. Partly so.

Q. Practically so, isn't it?

A. No, we laid some pipe-lines to mine around W in this claim.

Q. I am speaking about the other claims down here, you laid the pipe-lines in order to mine these claims down here in this locality, whenever a pipe-line becomes out of position for [96] proper mining you lift it up and put it in another place, change it.

A. Well, we relay it.

Q. You have done that time and time again around there?

A. A good many times.

Q. You took a pipe-line running around the southwest corner of the Lyng claim, you have lifted that up two or three times?

A. It has been changed.

(Witness continuing:) It has been changed from where it was originally.

Q. Now, aside from this work done in shoveling the ditch out every spring, and aside from the work in laying these pipe-lines across the disputed ground, and aside from the drilling that Mr. Brower did along the line here, that you told about, these two holes, will you tell the Court when, if ever, the Pioneer Mining Company did any work within the disputed area, who did it, and when?

A. 1903 and 1907. That is the only time that I know we did any work within the disputed ground, then I know Charlie had some men when Bard was working.

Q. Just state what you know.

(Testimony of Louis Stevenson.)

A. Yes. 1903 and 1907.

Q. Now, the 1907 work was the drilling work?

A. It was.

Q. I ask you to eliminate that, you have described that in detail to the Court. Besides the work you did in cleaning the ditch every spring, laying the pipe-lines and the drilling done by Mr. Brower, what other work, if any, did the Pioneer ever do, since it owned Bench [97] No. 1 within the ground in controversy, the time when it was done, and who did it?

A. You want me to eliminate the prospecting in 1903?

Q. Not if there was any prospecting done within the ground in controversy in 1903, I want to know when it was done, and where it was done, and who did it. Will you step to the map and show me where it was. Mark it approximately where you claim the Pioneer Mining Company did some work in 1903.

A. I would place it in here. (Witness draws a circle east of the point S.) (Continuing:) The work was done from September 18th to October 3d. I don't know the name of the person who did it. I can't tell you the name.

Q. I ask you if you don't know it to be a fact that Mr. Hopkins was working at the time you claimed the Pioneer Mining Company was working?

A. Hopkins was working further south.

Q. Draw a circle around where Mr. Hopkins was working.

(Testimony of Louis Stevenson.)

A. I believe in here. (Witness marks a circle with letter "H" in center on Plaintiff's Exhibit "A.")

Q. How far from where Mr. Hopkins worked would it be to where you claimed the Pioneer worked at that time, 1903?

A. About 50 feet. 50 or 75 feet.

(Witness continuing:) The character of the work done at that point by the Pioneer was prospect holes. I don't remember how many. I walked up that way with Mr. Lindeberg when they were working there and I saw them a couple of times. I was at Discovery on Little Creek and Mr. Lindeberg asked me to pick out two men to go over there and prospect. I saw them when we passed by. I couldn't give you their names.

Q. How is it that you remember who it was did the work down [98] at this end of the claim when you can't remember this?

A. I haven't stated any names.

(Witness continuing:) The Pioneer kept a record of the work that was done. That is the only prospecting work that we ever did inside of the lines in controversy.

Q. Is it not a fact that at all times since you knew of that claim in 1903 you knew that the Pacific Coal & Transportation Company have had men working on the ground in controversy, and have been claiming the ground in controversy?

A. I knew they had men out there in 1903, and 1904 and 1905, and when that drill was there in 1907,

(Testimony of Louis Stevenson.)

and then when Mr. McCumber was there.

Q. When did you first see Mr. McCumber on the ground in controversy, or his men?

A. In the fall of 1909, but remember Mr. Gilmore I was out from here in the winter of 1908 and 1909, I wasn't here.

Q. I understand, I am trying to find out when you first saw Mr. McCumber's men on the ground in controversy? A. In the fall of 1909.

Q. Where were they working?

A. Very close to the letter U.

Q. Right up where the letter M is in the circle?

A. Very close.

Q. What were they doing there in the fall of 1909?

A. Starting to sink a shaft.

Q. How long did they work there?

A. They were there until along towards spring.

Q. All winter? A. Yes.

Q. How many were working? [99]

A. Only two.

Q. Did you know them?

A. Only by sight, I knew the one on top that I used to speak to.

Q. Did you ever see Mr. McCumber out there at that shaft?

A. I have seen him there, but I wasn't close, I seen *his* at a distance.

(Witness continuing:) They dug two shafts there, one a little closer to the line than the one you speak of. I believe they timbered the big one, the

(Testimony of Louis Stevenson.)

big shaft. I know they had a boiler there, do not know whether they had any pumps or not. I saw water coming down the pipe. I went over there but I didn't examine the ground in the spring of 1910, and I did not pan on their dump to my recollection. I didn't discuss with the men in charge whether or not they had found pay and prospects. I knew about the prospects. Mr. McCumber's men were living at that time, 1909 and 1910, in a cabin at the northeast corner.

Q. Red Cabin? A. Yes, sir.

Q. Will you mark on your map where that cabin was, and write red cabin and draw a circle around it, approximately where it was?

(Witness writes "red cabin" and draws a circle around it.)

Q. The red cabin was there in the fall of 1909?

A. It was. (Witness continuing:) I saw the cabin there in the fall of 1909.

Q. And that was within the ground in controversy? A. Yes, sir.

Q. And that cabin has been there in the same place ever since? A. It has.

Q. And that cabin was on the ground at the time you started this suit? [100] A. It was.

Q. And you knew it was Mr. McCumber's cabin, occupied by his men?

A. I didn't know who owned it; I knew it had been occupied.

Q. Now, along in 1909, along about that time, the Pioneer tried to buy this ground, Mr. Stevenson,

(Testimony of Louis Stevenson.)

prior to the time you brought this suit?

Mr. SCHOFIELD.—Objected to as wholly immaterial, not proper cross-examination.

Mr. GILMORE.—Men don't usually run around trying to buy someone else's ground if it belongs to them.

The COURT.—I don't know that that is very much of an argument. Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

Q. During all of the time that Mr. McCumber's men were mining there you knew, of course, that they were claiming the ground in controversy under the Grant title? A. I did.

Q. And you knew that Mr. Bard and Mr. Muther were claiming under the Grant title?

A. I didn't know under what title they were claiming. I didn't know of the Grant claim at that time.

(Witness continuing:) At that time I had a talk with Mr. Bard but I don't remember what he told me. Sometime after I knew they claiming under the Grant title.

Q. Was the work that was done by Mr. Doverspike and Mr. Howard open and visible to any one passing there, the work they did in 1902 and 1903?

A. I guess it was. When they were on top of the ground.

Q. State to the Court whether the work done by Mr. Hopkins was open and visible to any one passing. [101]

(Testimony of Louis Stevenson.)

A. The man on the windlass would be seen by anyone passing.

Q. Was there a dump in sight?

A. A small dump.

Q. Now, the work done by Mr. Bard and Mr. Muther was that open and visible to anyone passing?

A. Not open, but the windlass would show on top of the ground.

Q. If there were any dumps thrown up by Mr. Bard they would be seen from the railroad track?

A. Yes.

Q. Now, you sent Mr. Mathieson and Mr. Nelson out there to work on the 6th of November, 1910?

A. I did.

Q. Told them to start digging a hole?

A. Yes, sir.

Q. You did that for the express purpose, as you told Mr. Lomen to start this lawsuit, claim you were in possession?

A. I wouldn't state that was the express reason.

Q. Didn't you talk to Mr. Lomen in his office first? A. Yes.

Q. He told you to get a couple of fellows out there and start digging, then he would start a lawsuit and quiet title?

A. I don't know, I know I talked to Mr. Lomen about the lawsuit.

Q. Mr. Lomen told you to take a couple of fellows out there and start digging, then he would start a lawsuit and quiet title?

A. We discussed that before starting the lawsuit.

(Testimony of Louis Stevenson.)

Q. That was the reason you took Mathieson and Nelson out and started them to work?

A. I intended to ground sluice, the same as I had always done, [102] prospect and ground sluice.

Q. Would you deny that was the reason?

A. No, I wouldn't say that.

Q. Was it for the same reason that you went out on the 7th to see if anybody was in the red cabin?

A. On what 7th?

Q. The red cabin?

A. The day after Mathieson went to work? I was looking to see if anybody was around there.

Q. Did you go into the cabin to see if anyone was in the cabin?

A. I didn't go in, I was around the cabin.

Q. You don't know whether there was a man inside of the cabin or not on the 6th or 7th of November?

A. I was not up there around the cabin.

Q. How long were you out there?

A. I lived on Little Creek all fall.

Q. How long were you out on the claim where Mathieson was working on the 6th?

A. I don't know.

Q. Were you there an hour?

A. I might have been.

Q. Were you there over an hour?

A. I wouldn't state, I never looked at my watch.

(Witness continuing:) I don't know how long I was there; I would not say whether I was on that claim an hour or two hours but I was up in that vicinity the most part of the forenoon. I couldn't

(Testimony of Louis Stevenson.)

state whether I was on Bench No. 1 the afternoon of the 6th or not, and I can't state whether I was there on the night of the 6th or not. I was wandering around there every day. [103]

Q. Were you on the ground in controversy the morning of the 7th of November, 1910?

A. I must have been.

Q. Were you there?

A. I passed every day, I am sure.

Q. And how long a time each day did you pass there? A. Oh, not so long.

Q. A few minutes? A. More or less.

Q. You didn't go into the cabin to see if there was anybody there?

A. I never went into the cabin, I was around it.

Q. That was the day the lawsuit started, the 7th of November? A. The record will show the date.

Q. You were out there that specific date to see if Mathieson was digging on the lower end of No. 1 and to see if anyone was on the ground in controversy?

A. I knew from indications there was nobody living in the cabin. Coming over from Little Creek I could see pretty well over the claim.

Q. You were out on the ground in controversy on the 7th?

A. The men were digging there and I was looking after it.

Q. Were you there for the purpose of giving evidence in this lawsuit?

A. I don't know as I was.

Q. That was your purpose in going, so you could

(Testimony of Louis Stevenson.)

come into court and say you were digging on the 7th?

A. I know I was there.

Q. The Pioneer didn't have anybody on either the 6th or 7th of November, 1910, working or mining in any way whatever on the ground in controversy?

A. No, sir, it had not. [104]

Q. And it has never had anyone mining in any way whatever since the 7th day of November, 1910, on the ground in controversy? A. No, sir.

Redirect Examination.

Q. What observations did you make at that time with reference to the cabin being occupied or not, when you were there?

A. There was no stove-pipe on the cabin.

Q. And how was the temperature of the weather at that time?

A. Well, that I don't remember. I believe it was perhaps a little colder last fall than this year, but what the temperature was, I don't know.

Q. You did observe that there was no stove-pipe?

A. Yes.

Q. Did you observe whether there was any smoke coming out? A. I didn't see any smoke.

Q. Did you try the door of the cabin at that time?

A. No.

Q. Did you see any evidences as to whether the cabin was or was not occupied, and if so, what did you see?

A. I did not see anything at all; it was all quiet around the cabin and no sign that anybody was living in the cabin at that time.

(Testimony of Louis Stevenson.)

Q. Was there snow on the ground at that time, do you know? A. Very little. [105]

Testimony of J. A. Bachelder, for Plaintiff.

J. A. BACHELDER, a witness on behalf of plaintiff, being first duly sworn, testified as follows:

My name is J. A. Bachelder. I live in Nome, have resided here since 1907. Engaged in the banking business and have been engaged in that business for 15 years, and acted as paying teller all that time. Am familiar with the handwriting of a great many people so that I can identify them at sight.

Q. I show you the original signature of Andrew Jensen attached to deposition in this case. Look at it closely. (Witness examines signature.) Now, I will show you purported signature of Andrew Jensen, being attached to a purported notice of location of a mining claim marked for identification Exhibit "I." State whether in your opinion the two signatures were made by the same person, the one in the notice and the one in the deposition.

A. I should say that those were made by the same man.

Q. Andrew Jensen? A. Yes, sir.

Cross-examination.

I have been in the employ of the Pioneer Mining Company during the past summer as bookkeeper, but I am now in the employ of the Miners and Merchants' Bank of Nome. The signature of G. W. Price, deputy, at the foot of the page, and also the signature on the back of the notice (Exhibit "I")

(Testimony of J. A. Bachelder.)

for Identification) were written by the same person I should say.

Q. Is the word "Nelson" there in the same handwriting as the body of it? [106]

A. You mean is that the same?

Q. No, is this pencil writing the same handwriting as the body, the rest of the instrument?

A. No, I shouldn't say it was.

Q. Is the body of this instrument in the same writing as the words "Andrew Jensen"?

A. It is hard to tell, I should say not.

Redirect Examination.

Q. I will ask you, Mr. Bachelder, whether the signature, the purported signature of O. Schuler appearing on the face of Exhibit "I" for Identification is in the same handwriting as the body of the instrument?

A. Yes, I should say it was the same.

(Witness continuing:) By comparison I would say that the person who wrote the name C. L. Spanggard did not write the name O. Schuler or the body of the instrument, and in the same manner I would say that the person who wrote the signature Andrew Jensen, did not write the names O. Schuler and C. L. Spanggard. [107]

Testimony of Fred Cowden, for Plaintiff.

FRED COWDEN, a witness on behalf of the plaintiff, recalled.

Q. What is the record I show you at the foot of page 64?

A. A record of Bench claim No. 1 Moonlight, as

(Testimony of Fred Cowden.)

located by Andrew Jensen.

Q. Offered in evidence yesterday? A. Yes, sir.

Q. I ask you to examine the signature of G. W. Price, Deputy, at the foot of that instrument, at the foot of that page, and also examine the signature on the back of the notice Exhibit "I" for identification, and state whether in your opinion the person who wrote that and the one who endorsed that instrument Exhibit "I" for identification, G. W. Price, Dpt., is the same person who signed the record offered in evidence as G. W. Price, Deputy? A. It seems to be.

(Witness continuing:) I am not familiar with the signature except as it appears in the records and from such familiarity I would say that he had endorsed that certificate. I am familiar with the signature of C. L. Spanggard, I had seen his signature a number of years ago; as soon as I saw this I thought it was his signature. To the best of my knowledge it is his signature on Exhibit "I" for identification.

Mr. LOMEN.—We offer the original notice of Andrew Jensen in evidence at this time.

Mr. GILMORE.—On behalf of the defendants we object to the offer on the ground of insufficiency of proof. There appearing at this time no proof [108] whatever that this record was made at the time it purports to have been made, to wit, on the 2d or 3d day of January, 1899, even if admitting that the signatures were genuine.

The COURT.—Objection overruled. It may be received and marked Plaintiff's Exhibit "I." To which ruling of the Court the defendants then and

there excepted and the exception was allowed. Said exhibit being as follows:

[Plaintiff's Exhibit "I."]

"Bench Claim No. 1.

Cape Nome Mining Dist. Jan. 3.

Moonlight Creek.

I the undersigned claim 1320 feet toward Anvil Mountain and 600 feet toward Moonlight Creek being bounded north west by Moonlight Claim, east by Nelson's Claim.

ANDREW JENSEN.

Witnesses:

O. SCHUELER.

C. L. SPANGGARD." [109]

Testimony of Arthur Gibson, for Plaintiff.

ARTHUR GIBSON, recalled by plaintiff, testified as follows:

I became familiar with the ground in the vicinity of Bench No. 1 on Moonlight in 1901. I know a claim conflicting with No. 1 Bench Moonlight, known as No. 2 on the east fork of Moonlight. I made a survey of No. 2 east fork of Moonlight in 1901. I made the survey on the 23d of June, 1901. I saw some stakes near the point "A," as shown by Plaintiff's Exhibit "A," also some willow stakes at the point V, or somewhere about there. I do not remember how many stakes there were. I did not make any examination as to any markings upon the stakes at that time. The reason I went to that point was we were making a survey of No. 2 east fork, Moonlight. I was ahead of Mr. Fred Williams, who was

(Testimony of Arthur Gibson.)

with me, one of the owners of No. 2 east fork, who assisted me in surveying. I went down there to take the stake notes, presuming that was one of the corners, but he called me over to point A for his stake. I did not make any examination of the stakes at the point V with reference to any writings or markings.

Q. Now, when did you make the survey of No. 1 Bench Moonlight?

A. I started in making the survey, an adverse survey of No. 2 East Fork on September 9, 1902.

Q. When did you make the actual survey of Bench No. 1 on Moonlight? A. On September 9th, 1902.

Q. Who, if anyone, was with you or assisted you in making that survey? A. Mr. Spanggard.

Q. Who else, if anyone, was with you? [110]

A. I don't recall whether Mr. D. W. McKay was with me at that time or not, I think he was but I am not positive.

Q. Who else, if anyone?

A. There was one or two of the owners of No. 2 East Fork, either one or both, Mr. Fred Williams.

Q. Was Mr. A. G. Kingsbury present?

A. Not at that time.

(Witness continuing:) The first stake we went to was at the point indicated on the map as H. In making the survey of No. 1 Bench on Moonlight, that is the first stake that Mr. Spanggard and myself went to; then we went to W.

Q. What stakes did you find there?

A. 2x4 pine stakes marked with pencil SW. corner of the Riparia placer mine, old willow, no writing visible.

(Testimony of Arthur Gibson.)

Q. Old willow stake, state whether or not that was identified by anyone.

Mr. GILMORE.—Objected to as calling for hear-say evidence.

The COURT.—Objection overruled. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

A. Identified by Mr. Spanggard.

Q. Identified as what?

A. As the southwest corner stake of Bench No. 1.

Q. Do you know Mr. C. L. Spanggard?

A. I do.

Q. What did you do at that corner, if anything, did you erect any other stakes at that corner, that is what I mean? A. Yes, sir. [111]

Q. State to the Court what stakes, if any, you erected there?

A. I afterwards erected a 2x4 pine stake and scribed it S No. 1, M. B.

Q. M. B. what was that? A. Moonlight Bench.

Q. Now, at the point N did you make a survey of that point? A. I did.

Q. And what stakes, if any, did you find at that point, Mr. Gibson, when you made the survey in 1902?

A. 2x4 pine stake, scribed NW. corner. Two willow stakes, one broken in two, no writing visible on either, small stone mound.

Q. State whether or not any of those stakes found at that point were identified by anyone as being the Bench No. 1 Moonlight stakes, yes or no. A. Yes.

Q. Who identified it and what did he identify it as?

(Testimony of Arthur Gibson.)

Mr. GILMORE.—Objected to as calling for hearsay evidence and trying to prove something somebody else knew about the ground through the mouth of this witness.

The COURT.—Objection overruled. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

A. Mr. C. L. Spanggard said that one—

Mr. GILMORE.—Objected to as hearsay.

Q. What did he identify the stakes as; I don't care what he said, what did he identify them as?

Mr. GILMORE.—Objected to as hearsay.

The COURT.—Objection overruled. To which ruling of the Court the defendants then and there excepted and the exception was allowed. [112]

A. As the corner of—the northeast corner of Bench No. 1 Moonlight.

Q. Did he identify any other corner at that place, of any other claim? A. Yes.

Mr. GILMORE.—The same objection, calling for hearsay evidence.

The COURT.—Objection overruled. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

A. The northwest corner of the Nelson Bench.

Q. What stake, if any, did you erect at that point marking the boundary line of Moonlight Bench No. 1?

A. 2x4 pine stake, scribed S No. 3, M. B. Notice of survey tacked on top.

Q. State whether or not you surveyed to point Q

(Testimony of Arthur Gibson.)

on the map. A. I did.

Q. Was there any stake there? A. No, sir.

Q. State whether or not that point was identified by anybody as a corner of Bench No. 1 Moonlight, and if so, by whom? A. It was.

Q. By whom?

Mr. GILMORE.—Objected to as calling for hearsay evidence.

The COURT.—Objection overruled. Exception allowed.

A. By Mr. Spanggard.

Q. Now, at point Q I would like to ask you if Spanggard identified that as a corner of Bench No. 1 Moonlight? A. Yes.

Q. Who? [113]

Mr. GILMORE.—Objected to as calling for hearsay evidence.

The COURT.—Objection overruled. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

A. Mr. C. L. Spanggard identified it as the Northwest corner of Bench 1 Moonlight.

Q. Now at point V did you make a survey at that point?

A. I did. (Continuing:) That is the point which I have already testified to that I saw the willow stakes.

Q. Was there any willow stake there at the time you made the survey of No. 1 Bench Moonlight?

A. No.

Q. State whether or not that point was identified

(Testimony of Arthur Gibson.)

by anyone as a corner of Moonlight Bench No. 1.

A. Yes.

Q. Who identified it?

Mr. GILMORE.—Objected to as calling for hear-say evidence.

The COURT.—Objection overruled. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

A. Mr. C. L. Spanggard.

Q. State whether or not the point identified by Mr. Spanggard is the point that you first saw the willow stake at when you made the survey on June 23d, of No. 2 East Fork Moonlight.

A. As near as I can tell from memory.

(Witness continuing:) I erected a stake at point V marking a corner of No. 1 Bench Moonlight. It was between the 9th and 30th of September, 1902, that I erected the stake at that point. [114] I placed a 2x4 pine stake at that point scribed S. No. 2 M. B. and placed a survey tack on top. I placed a 2x4 pine stake marked S. No. 4 M. B. and survey tack on top at the point Q.

Q. When were those stakes erected, the four of them, the four stakes you have testified to, when were they placed there by yourself?

A. I haven't got the exact date when I erected them, it was in September, 1902, during the month of September, 1902.

Q. By whom were you employed to make that survey and erect those stakes?

A. By Mr. D. W. McKay.

(Testimony of Arthur Gibson.)

Q. Now, where was stake No. 1 on this claim, Mr. Gibson? A. At point W.

Q. And from that point where is No. 2?

A. At V.

Q. And No. 3? A. At N.

Q. No. 4? A. At Q.

(Witness continuing:) I have been familiar with that claim since that time.

Q. State whether or not those markings have been on the claim since they were put there by you in 1902, fixing those boundaries.

A. So far as I know with the exception of the corner W. That is the southwest corner of Moonlight Bench, that I replaced; twice it has been mined out; it is there now, but it is covered up by tailings.

Q. Now, commencing at corner No. 1 Moonlight Bench No. 1, will you give me the course and distance from that to corner No. 2 designate it to the Court, from stake No. 1, the southwest corner? [115]

A. That would be point W; thence south $60^{\circ} 12'$ east, 741.5 to stake No. 2, southeast corner at V.

Q. And from there to corner No. 3, or the point N, will you give the course and distance?

A. Thence north $40^{\circ} 1'$ east 986.8 feet to stake No. 3, or the northeast corner at N.

Q. And from stake No. 3 to stake No. 4 will you give us the course and distances, stake No. 4 being point Q as designated on the map?

A. North $60^{\circ} 12'$ west 600 feet to stake No. 4, or the northwest corner.

Q. And give me the courses and distances now from

(Testimony of Arthur Gibson.)

corner No. 4 to the point of beginning or stake No. 1?

A. South $47^{\circ} 51'$ west 1021.3 feet to stake No. 1.

Mr. COCHRAN.—At this time I ask permission to amend the complaint to conform with the proof by setting forth the descriptions as just delineated and I ask leave to amend the complaint by substituting the descriptions which I offer at this time, reading as follows: Commencing at stake No. 1 which is identical with the southwest corner of Riparia placer mining claim and the northwest corner of placer claim No. 2, giving the courses and distances just as Mr. Gibson has given them, which I have checked up very carefully. That is I believe admissible under the code at any time if there is no objection.

Mr. GILMORE.—We make objection, if the Court please, to the amendment; it is an apparent variation of [116] the survey description in the complaint, the complaint alleging Mineral Survey No. 608. In its complaint plaintiff alleges that their northwest corner was 730 feet from the point N, the northeast corner and we have come here prepared to meet that issue and now, after they come into court, in the middle of the trial, they want to switch one of their corners of the claim 130 feet.

The COURT.—It is always in point to abandon any portion of the ground.

Mr. GILMORE.—I suppose they can abandon it all if they wish, but they were relying in their complaint on the Lewis survey, Survey No. 608, and we

(Testimony of Arthur Gibson.)

came here to meet that survey.

The COURT.—The amendment will be allowed. It may be attached to the margin, the original description may remain the same.

(To which ruling of the Court the defendants then and there excepted and the exception was allowed.)

Q. Now, Mr. Gibson, the map which you have been testifying in relation to, marked Exhibit "A" for identification, I believe you have answered that correctly represents the objects made upon the map from actual surveys? A. All except the pencil marks.

Mr. COCHRAN.—I offer the map in evidence.

Mr. GILMORE.—I would like to have the right to cross-examine the witness on the map before the Court passes on the offer.

The COURT.—Proceed. [117]

Cross-examination.

Q. Were you present on the ground the day the DePue Bench was staked? A. I was not.

Q. When was the first time you were ever on the DePue Bench?

A. June 23, 1901. (Continuing:) I saw the northwest corner of the DePue Bench at that time, that would be the point J on the map. I surveyed the Napa claim September 30, 1902. From my own knowledge I know the Napa claim is a relocation of the DePue Bench.

Q. Do you know whether or not the Nelson and the Carlson are the same, of your own knowledge?

A. Before I answer the question I want an explanation.

(Testimony of Arthur Gibson.)

Q. I would rather have the answer first?

A. But I want an explanation from you.

Q. I will make any explanation I can. What is it you want to know?

A. If the stakes are identified to me as by one of the locators and witnesses, is that sufficient to say that I know of my own knowledge?

Q. No, not the view I take of it, unless you were familiar with the claim and know it of your own knowledge.

The COURT.—That is absolutely something that has never been required of any surveyor that has ever brought a map in here before, and it is not going to be required now.

Mr. GILMORE.—Your Honor never permitted a map in evidence with a lot of writing on it that has not been proven and no other court has ever allowed it.

The COURT.—Proceed.

Q. When did you ever survey the Carlson location?
[118]

A. I didn't survey the Carlson location myself.

Q. Did you ever survey the Carlson?

A. Not for the owners.

Q. Did you ever do it for anybody?

A. I tied in the stakes.

Q. You tied in the Carlson location, the lower end at the points H and G? A. I did.

Q. And for several years you had in your notebook, and in your files, a map showing the Carlson location running from a point near L over at the top

(Testimony of Arthur Gibson.)

to point N and running down to H and G across the map? A. I did make a survey of it.

Q. And did you have a map as I have outlined?

A. Yes, sir.

Q. And you furnished a map like that to the owner of the Napa Bench?

Mr. COCHRAN.—Objected to as immaterial.

The COURT.—Objection sustained, to which ruling of the Court the defendants then and there excepted and the exception was allowed.

Q. When was the first time that the Carlson claim was surveyed or marked on the ground to your knowledge in its present form, as shown on that map by the letters N, J, G and H?

A. That is a question I couldn't answer.

Q. When was the first time you knew it to be marked on the ground?

A. When Mr. Spanggard identified the Nelson location to me.

Q. I am not asking you about the Nelson location. I am asking [119] you about the Carlson?

A. The Carlson location is a relocation of the Nelson.

Q. I ask you when was the first time you found the Carlson stakes marked as they are marked on that map?

Mr. COCHRAN.—Objected to for the reason that the witness has never testified that he ever found any stakes of the Carlson location.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there

(Testimony of Arthur Gibson.)

excepted and the exception was allowed.

Q. Did you ever find the Carlson location marked as you have it now on this map, this exhibit, just answer yes or no?

A. I haven't been to all corners, but those corners I have been to I found.

Q. What corners did you find? A. G and N.

Q. You never at any time found the Carlson location marked on the ground as shown by J and H?

A. I haven't been over to those corners.

Q. Where did you get your information from, Mr. Gibson, that the Carlson location is a relocation of the Nelson Bench, was that told you by somebody?

A. No, sir; from the records.

Q. Now, Mr. Gibson, tell the Court whether or not there is anything on the Moonlight claim, any dam or anything, to indicate a dam, at the point where it is marked dam on this map, at the present time?

A. No, sir.

Q. Has there been any dam there to your personal knowledge for several years, where you have it marked "dam" and [120] "reservoir"?

A. I don't recall how many years it is that they changed the dam, moved it further north.

(Witness continuing:) I got that information about that dam from my survey of 1902, the Moonlight Water Company's dam was there at that point then.

Q. Where are the Moonlight Springs at the present time with reference to where you indicate them on this map?

(Testimony of Arthur Gibson.)

A. The Moonlight Springs are shown there in words, I didn't write the letters quite big enough to cover all the springs.

(Witness continuing:) On the ground at the present time the intake of the Moonlight Water Company is inclosed with a barbed-wire fence in the form of a circle. The Moonlight Springs are just above the intake of the Moonlight Water Company. The Point S on the map represents the upper center stake of the Lyng Moonlight claim and the initial stake of the Grant claim.

Q. On the map you have it marked "steep bank." Where is that bank on the ground, with reference to the initial stake of these two claims, is it south of it or is it north of it?

A. All that ground is sloping in there; it is an easy slope, and the steep bank gradually slopes off to an easy slope there.

Q. Will you testify to the Court at this time that that map correctly represents the bank on the ground, that the bank is between the initial stake and the point U. There is no steep drop-off, is it not low and flat across from the initial stakes of these two claims to this point?

A. No, it is an easy slope. [121]

United States
Circuit Court of Appeals
For the Ninth Circuit.

Transcript of Record.
(In Three Volumes.)

THE PACIFIC COAL AND TRANSPORTA-
TION COMPANY, a Corporation, and M. D.
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Appellants,

vs.

PIONEER MINING COMPANY, a Corporation,

Appellee.

VOLUME II.
(Pages 337 to 544, Inclusive.)

Upon Appeal from the United States District Court for
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FILED
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(Testimony of Arthur Gibson.)

Q. Is it not a fact that on the ground the embankment, the rise of 8 or 10 feet is about 30 feet north of the initial stake of the claim indicated by point S, and that it is marked wrong the way you have it on the map?

A. That steep bank does not cross the easterly or upper end line of Lyng's claim.

Q. Mr. Gibson, did you draw what is marked "steep bank" on there from recollection, or did you draw it from survey on the ground?

A. Well, I measured some of the points on it and connected in between, but I didn't mark off the easterly part of it.

Q. A good deal of that is just guesswork and not survey at all, a great many of those objects on the map? A. I don't know of any.

Q. Isn't it guesswork when you tried to put the bank between the initial stake and point U?

A. There is no bank there.

Q. Why did you put "steep bank" there and over here, where the willows are?

A. It slopes off, drops off there.

(Witness continuing:) I have no independent recollection of the ground in that vicinity, as to whether there is or is not a steep bank running directly past and directly north of the initial stakes of those two claims. The steep bank does not cross the north end line of the Lyng claim.

Q. When did you first survey the ground claimed, the way you have it on the map?

A. September 30, 1902.

(Testimony of Arthur Gibson.)

Q. Did you see the stakes on Sept. 30, 1902, of the Grant claim? [122]

A. Those stakes that I hadn't previously taken account of, I saw.

Q. Which ones did you read on September 30, 1902?

A. The northerly corner of the Grant claim at point O.

Q. What stakes did you find at the point O?

A. 2x4 pine stake, marked in ink or black paint, 4, and written with pencil N. E. Corner stake W. N. Grant, located January 9, 1899.

(Witness continuing:) While at the point O, the same day, I saw a small willow there. There was a large mound, no writing visible on the willow. It was identified by Mr. Kingsbury as Grant's old stake. I didn't read any other stake that day that purported to be a Grant claim stake.

Q. Had you prior to that time been to the other corners? A. I had.

Q. When had you been to the other corners of the Grant claim, or any of them, what dates?

A. I was to one of the Grant stakes at point P, although I didn't take any note of it, on October 14, 1901, when I surveyed No. 6 Below Good Luck for D. W. McKay.

Q. When were you at the initial stake at point S?

A. That was September 9, 1902, or a few days subsequent, during September, 1902. (Witness continuing:) I don't know whether there was a Grant stake there or not. I have no record of it. I sur-

(Testimony of Arthur Gibson.)

veyed at the point U on September 9, 1902; there was a 2x4 pine stake marked in ink or black paint Figure 2. Marked southwest corner stake, W. N., Grant, locator, January 9, 1899. There was another mound alongside of it, very close to it at that time, about 6½ feet. In September, 1902, I surveyed the point L being the northeast corner of the Grant claim. I found a 2x4 pine stake marked with ink or black [123] paint, figure 3, marked with pencil S. E. Corner stake W¼N. Grant locator, January 9, 1899.

Q. Now, Mr. Gibson, does the No. 6 Below Good Luck claim as you have it drawn on that map, represent the shape of that claim as you surveyed it for McKay on the 14th of October, 1901?

A. No.

Q. When did you survey the Moonlight or Lyng claim first?

A. During September I tied in all of the corners; during the month of September, 1902, but I did not survey it until the early part of October.

Q. Did you ever at any time survey the Moonlight claim or the Lyng claim in the shape you have it on that map?

A. Yes, the stakes were identified to me.

(Witness continuing:) The point R on the map represents one of the corners claimed by D. W. McKay at the time I surveyed No. 6 below Good Luck, October 14, 1901. At that time I surveyed the claim Z1 at the letter P, then to the letter R and then down to I. At that time I drew a map of the Bob Lyng

(Testimony of Arthur Gibson.)

claim as represented by letters S, U, X, Y and R.

Q. When was the first time that you ever tied in the Moonlight or Lyng claim or drew a map of the claim showing it in its present form, U, S, P, X and W?

Mr. SCHOFIELD.—Objected to as wholly immaterial.

The COURT.—Objection sustained, to which ruling of the Court the defendants then and there excepted and the exception was allowed.

(Witness continuing:) The willows and objects on the map were drawn from recollection of early surveys and from present surveys. They show, approximately which portions of the claims is covered by scattered willows or dense willows. [124]

Q. When did you survey in or tie in what you have marked here “dense growth of willows”?

A. There isn’t any dense growth of willows now, that was in the early surveys.

Q. The ground in that vicinity is largely covered with tailings from winter works, is it not, on the surface?

Mr. COCHRAN.—Objected to as immaterial.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

Mr. GILMORE.—We still renew our objection that there are many objects on that map that are not proven.

The COURT.—Unless counsel specified some particular object, objection overruled.

(Testimony of Arthur Gibson.)

Mr. GILMORE.—I will specify one of them, and that is the so-called Carlson or Nelson location, and the further objection that there is a lot of information on that map that there is no record of before the Court, and the fact that the Carlson location is a relocation of the Nelson Bench, particularly that he drew the Carlson claim over the Napa.

The COURT.—The objection to the offer is overruled and the map may be received in evidence and marked Plaintiff's Exhibit "A." To which ruling of the Court the defendants then and there excepted and the exception was allowed.

Redirect.

I know Mr. Brower and I was recently upon this claim with him. He identified some drill holes and I tied them in. [125] Referring to Plaintiff's Exhibit "A," the holes are shown at point 2, point 3 and point 4. There is another at the upper part of letter S. indicated by figure 2, and another indicated by figure 3, and one indicated by figure 4. I saw those drill holes while I was out there with Mr. Brower.

Q. Were you on this claim in 1904, during the time of the construction of the Anvil ditch?

A. Yes, sir. (Witness continuing:) I surveyed for that ditch; the size I don't just know, because in some places it is wider and other places narrower. Its approximate capacity is about 800 or 1000 miner's inches of water. The water of the ditch is used for mining placer claims belonging to the Pioneer Mining Company. I have

(Testimony of Arthur Gibson.)

been familiar with the mining operations carried on by the Pioneer Company more or less for the past eight or ten years in that vicinity. The Pioneer Mining Company has been mining by hydraulic means. I couldn't tell when they first commenced hydraulicking on No. 1 Bench. I know that a construction gang was on the ditch commencing construction work before I completed the survey. The Pioneer Mining Company have been mining the southwesterly portion of Bench No. 1. I have got notes of the amount mined, but I cannot tell on the map just how much. I don't recall whether it was actual hydraulic mining or by self-dumper and hoist. They used the water from Anvil ditch, but whether for sluicing or ground-sluicing, I do not know. They have been carrying on their mining operations on the southwest portion of Bench No. 1 on a large scale for a couple of years taking their water through iron pipes. The iron pipes are designated on Exhibit "A" and the pipes are correctly represented on the map as far as Bench No. 1 is concerned. I saw some work in the vicinity of the point N at the time I surveyed in 1902; it was prospect holes; there was a [126] prospect hole, 3½ feet by 6 feet and 4 feet in depth.

Q. Did you refresh yourself, refresh your memory from your field-notes in making the answer that you have just made?

A. In the dimensions of it, yes.

Q. When were those field-notes made, Art?

A. At the time of the survey in September, 1902.

(Testimony of Arthur Gibson.)

(Witness continuing:) The prospect hole that I described in that neighborhood was about ten feet from there, northeasterly, something like that.

Q. There is a point designated as "1" on this map, delineating Bench No. 1 Moonlight; what is there at that point, what does that figure "i" represent?

A. It is an old cut or prospect hole.

Q. And state whether or not that was designated to you by any one at the time. A. It was.

Q. By whom?

Mr. GILMORE.—Objected to as calling for hearsay evidence.

Mr. COCHRAN.—I am going to follow it up by the parties themselves.

The COURT.—Objection overruled, to which ruling of the Court the defendants then and there excepted and the exception was allowed.

A. By Mr. Stevenson. [127]

Cross-examination.

Q. Are you in the employ of the Pioneer Mining Company as an engineer? A. Occasionally, yes.

Q. Are you at the present time?

A. Yes. (Witness continuing:) I am not under a salary and I have not a contract with the Pioneer.

Q. You put in quite a long time, haven't you, Mr. Gibson, in making maps for this lawsuit for the plaintiff?

A. You might call it a long time; I started on that map this fall, but just worked on it now and then when I had time to spare.

(Witness continuing:) I completed Plaintiff's

(Testimony of Arthur Gibson.)

Exhibit "A" sometime last month; I commenced about a month before, something like that, but I didn't work steady. I made the blue-print that was attached to Jensen's deposition before I started on that map.

Q. Were you in the employ of the Pioneer Mining Company as engineer upon the tunnel?

A. Yes, sir. (Continuing:) I made three trips to one of the tunnels, and four trips to the two tunnels. It is not true that I put in the majority of my time working for the Pioneer Mining Company, but from my time-book I can tell the exact number of days that I worked for the Pioneer. I do not put in one-third of my entire time working for the Pioneer.

Q. Now, did you ever make any other map or blue-print of the ground in controversy than the map that is upon the wall here, Exhibit "A"?

Mr. COCHRAN.—Objected to as immaterial and not proper cross-examination.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted [128] and the exception was allowed.

(Witness continuing:) I first surveyed No. 6 Good Luck on October 14, 1901, for D. W. McKay. McKay told me he was one of the owners of the claim. He had been working on the ground. He did not point out the corners. The man that was with me, Mr. Elliott, pointed them out. I remember Mr. McKay was working out there once when I went out there, but he was not working there at the time I made the survey.

(Testimony of Arthur Gibson.)

Q. Where did you survey the east end of No. 6 Good Luck, 14th of October, 1901, at what points?

A. X, Z1, Z2, P and R. (Witness continuing:) I made a map of the claim at that time and delivered it to D. W. McKay.

Q. Please examine the exhibit that I hand you and state, if you can, what it is.

A. That is a copy of the original survey that I made for Mr. McKay October 14, 1901. (Continuing:) It is a blue-print of the original drawing.

Q. If the corner of No. 6 Good Luck claim or McKay Bench was at the point R, would it or would it not be within the boundaries of Bench No. 1 as surveyed by you? A. Yes.

Q. So that if Bench No. 1 claim was located by Mr. Jensen in the form you have it on the map, it would overlap part of No. 6 Good Luck or the McKay Bench?

Mr. SCHOFIELD.—Objected to as argumentative.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

Mr. GILMORE.—I now offer, if the Court please, at this time, the blue-print identified by the witness.

[129]

Mr. COCHRAN.—We object to it on the ground that it is irrelevant and immaterial, collateral to any issue involved in this case.

The COURT.—This is offered for the purpose of showing the conflict between No. 6 Good Luck and No. 1?

(Testimony of Arthur Gibson.)

Mr. GILMORE.—Yes, your Honor, and also the the additional purpose of showing the true boundaries of No. 6 Good Luck, and to show that Plaintiff's Exhibit "A" is immaterial.

The COURT.—Objection overruled. The blueprint may be marked Defendant's Exhibit 4. Said exhibit being as follows: [130]

(Testimony of Arthur Gibson.)

Q. Now, Mr. Gibson, have you your note-book with you of the stake readings made on the 14th of October, 1901, with reference to the stakes you found at points P and R?

A. I didn't take all of the stakes.

Q. Have you your note-book which you used that day?

A. Yes. (Continuing:) I have not got all of the stakes that were at those points. At the point P I placed a survey stake there 2x4 pine stake.

Q. What stakes did you find there when you went to point P, on the 14th day of October, 1901?

A. A 1½x2½ pine stake marked southwest corner Bench No. 5. (Continuing:) It represented Bench No. 5 Below Good Luck.

Q. Where does that claim lie?

Mr. COCHRAN.—Objected to as being irrelevant and immaterial.

The COURT.—Objection sustained, to which ruling of the Court the defendants then and there excepted and the exception was allowed.

Q. What other stakes did you find at that point, [132] point P, at that time?

A. A bunch of stakes that did not have any numbering on, No. 6 Bench. (Continuing:) My notes did not show how many stakes were in the bunch.

Q. What did you place there at that point that day?

A. A 2x4 pine stake, scribed SE. Corner Bench No. 6.

Q. Referring to point R on the map, will you

(Testimony of Arthur Gibson.)

please tell me what number that is in your field-notes of that survey, Point B?

A. That is No. 7 in the note-book.

Q. Will you give me the readings of any stakes and monuments taken at point R by you on the 14th day of October, 1901?

A. Well, stake marked Stake No. 4 Olympia Placer claim, and another willow, reading illegible.

(Witness continuing:) My notes do not give the size of the stakes that is all the stakes I found there. I placed a 2x4 pine stake and scribed it Bench No. 6 as a corner of Bench No. 6 Below Good Luck, the claim I was surveying. I took some stake readings northerly from point P, about 450 feet distant, but it has nothing to do with this lawsuit. I have now given to the Court all the stake readings that were made in the vicinity of the points P and R on the ground on October 14th, 1901, by myself that I recollect, or that are noted in my note-book. I next surveyed on the vicinity of Moonlight Springs on May 27th, 1902.

Q. What did you survey on May 27th?

A. The Jerome Fraction. (Continuing:) At that time, May 27th, 1902, I surveyed at point W.

Q. Please read to the Court your stake markings from your note-book [133] of all stakes found at point W on the 27th of May, 1902.

A. 2x4 pine stake, marked with pencil SW. corner of the Riparia Placer claim.

Q. What else?

A. A 2x4 pine stake marked with pencil No. 2

(Testimony of Arthur Gibson.)

Winter Fraction; 1/4-inch by 2-inch pine stake, marked with blue chalk, northwest corner fraction Winter claim on Moonlight creek; willow, no marks; a sod mound around four stakes. There was a 1/4-inch by 4-inch pine stake also, but no markings. Also a 2x4 pine stake marked with pencil stake No. 4 SW. corner of J. Fraction, I scribed it S. No. 4 J. F.

Q. What did that stand for?

A. Stake No. 4 Jerome Fraction.

Q. Did you at that time find any stake or mark or monument that you personally could identify as a corner of Bench No. 1? A. No, sir.

Q. On that day did you make a survey of point U as shown on this map, that is, on May 27th, 1902?

A. Yes, sir.

Q. Please read to the Court all of the stake markings and objects that you saw at that point on the 27th of May, 1902?

A. On the southerly stake or the northerly stake?

Q. How far apart are they? A. 6.7 feet.

Q. Take the southerly group of stakes, they are both marked U, are they not? A. Yes, sir. [134]

Q. Please read them, go ahead and read them?

A. A 2x4 pine stake, writing illegible, claimed to be southeast corner Riparia or No. 1 Moonlight. I think my recollection is that the Jerome Fraction stakes were all placed there before, but I scribed them, 2x4 pine stake.

Q. What did you scribe them?

A. S. No. 3 J. F. That was all at that corner.

Q. Now, take the bunch of stakes 6 feet north of

(Testimony of Arthur Gibson.)

that bunch, at the point U, what stakes did you read that day, if any, on the 27th day of May, 1902?

A. 2x4 pine stake, in earth mound, marked 2, marked in ink or paint.

Q. Is that the one referred to yesterday as being marked in carriage paint, large letter or figure 2 on top?

A. Yes, sir, marked in pencil SW. corner stake, W. N. Grant located Jan. 9, 1899. That is all that I found.

(Continuing:) I have a record of the character of mounds of the group at the point U. There appeared to be no mound at the south bunch of stakes, but there was a mound of earth around the Grant stake but I have no record of the size of it. At that time, however, I don't think the mound was very large. At that time I did not survey to the point V as shown on the map. I did survey to the point A, being the Southwest corner of No. 2 East Fork.

Q. Please tell the Court what stakes, if any, you found at point A on the 27th day of May, 1902?

A. $\frac{3}{4}$ by $1\frac{1}{2}$ inch pine stake marked with pencil Fraction Claim No. 2 Stake. $\frac{1}{2}$ -inch by 3-inch pine stake, marked with paint No. 3 stake Winter Fraction; 2x4 pine stake which I scribed S. No. 5 J. F. That was the same stake I placed there a year before, at the time I [135] surveyed No. 2 East Fork, at that time I only marked those stakes with pencil, they were not scribed.

(Witness continuing:) At the point represented on the map, Plaintiff's Exhibit "A," where the red

(Testimony of Arthur Gibson.)

line and the railroad and the dotted line meet, which I have designated with the figure 13, on May 27th, 1902, there were no stakes, but I erected a stake at that point and scribed it S. No. 2 J. F., meaning Stake No. 2 Jerome Fraction. I did not take any stake readings in the vicinity of figure 13.

Q. What did you call the point in your field-notes shown here on the map, this 13?

Mr. COCHRAN.—Objected to as immaterial and not proper cross-examination.

The COURT.—I don't see where the cross-examination comes in, Mr. Gilmore, you have established a point.

Mr. GILMORE.—I intend to show that this map, Plaintiff's Exhibit "A," is not a correct map of the claims in that vicinity shown by actual surveys by this witness on the ground; that it is not correct in any detail outside of the Grant claim and a portion of the so-called Bench No. 1; the rest is all fixed up for a lawsuit map, and I intend to demonstrate it by cross-examination. I want the witness to identify this corner so that when I get the notes in evidence figure 13 will be shown to represent a certain figure in the notes.

The COURT.—You may proceed.

A. It is represented by figure 2 in my notes. (Continuing:) [136] On May 27th, 1902, I made stake readings at the point B.

Q. What number is B in your field-notes?

A. Indicated by figure 1.

Q. What stakes, if any, did you find at point B on

(Testimony of Arthur Gibson.)

the 27th of May, 1902?

A. The initial stake of the Jerome Fraction and one of No. 2 East Fork bearing location notices, each one in separate box, a 2x4 pine stake which I scribed No. 1 J. F. (Continuing:) I did not make any other stake readings in that vicinity on that day. The next survey that I made after May 27, 1902, in that vicinity, was on September 9th, 1902.

Q. Where was the first place that you began surveying on September 9th, on any of the claims shown on the map, Plaintiff's Exhibit "A"?

A. At the point H.

Q. Now, read to the Court all of the stakes that you found there at the point H, if any, on the 9th or between the 9th and the 30th of September, 1902?

A. Old willow, no writing visible, identified by Mr. C. L. Spanggard as Nelson's stake; $\frac{1}{2}$ inch by 3 inch pine board, blank $\frac{1}{2}$ by 3 inch pine board, marked with pencil, stake No. 3 Lucky Fraction, May 5, 1902; 1 inch by $1\frac{1}{2}$ inch pine stake, 2 with pencil, No. 2 stake Joney Fraction; $\frac{1}{2}$ by $2\frac{1}{2}$ inch pine stake, marked with pencil NW. stake, No. 1, couldn't read placer claim; 2x4 pine stake scribed SW. cor. $\frac{1}{2}$ x3 inch pine stake, writing illegible; $\frac{1}{2}$ x4 inch pine stake, box nailed on same containing location notice, writing illegible; $\frac{1}{2}$ x1 inch pine, marked with black chalk, [137] stake No. 1 SE. Corner, July 25, 1900, and the balance I could not decipher. 2x4 pine stake marked with ink or black paint, No. 5 stake, Winter Fraction, SE. Corner initial stake marked with pencil SE. Cor. was written on it; $\frac{1}{2}$ x6 inch

(Testimony of Arthur Gibson.)

pine stake, with pencil, initial stake of Jemie Fraction Claim SW. Corner stake of P. D. Winter, as per power of attorney for J. H. McCann, July 5, 1902, original location notice for said Fraction was set on top of stake.

Q. Now, Mr. Gibson, what number in your field-notes of your survey made between the 9th and 30th of September, 1902, corresponds to letter G on your map, Plaintiff's Exhibit "A"?

A. The figure 8 represents the point G.

Q. Will you please read the stake markings at point G found by you in the survey of September 9th to 30th, 1902, at point 8, or point G in your field-notes?

A. 2-inch square pine stake, scribed SE. Cor. marked with pencil E. Carlson; $\frac{1}{2}$ x1 inch pine stake blank. Old willow, writing illegible and another old willow writing illegible.

(Witness continuing:) I have no record of the size of those willows. A $\frac{1}{2}$ x2 $\frac{1}{2}$ stake marked with pencil SE. Cor. stake Zero claim; $\frac{3}{4}$ x2 inch pine stake marked with pencil No. 1 stake Joney Fraction claim, and the balance I could not decipher; willow marked with pencil No. 3 NW. Cor. No. 1 Above Discovery Bench Fraction $\frac{1}{2}$ x2 $\frac{1}{2}$ pine stake marked with pencil Stake No. 2 Lucky Fraction, May 5, 1902; $\frac{1}{2}$ x2 inch pine stake blank, a mound around it; 2 inch pine stake scribed S. E. C. and then Napa; drift-wood stake, written with pencil but writing illegible.

The scribed stakes were not survey stakes, they had [138] no nail on top in the first place, and

(Testimony of Arthur Gibson.)

they were there when I made my first survey, but I don't know of my own knowledge whether they were put there by surveyors or not.

On the 9th of September I surveyed at the points J and N, as shown on plaintiff's map, Exhibit "A." The point N is represented in my field-notes by the figure 16.

Q. Will you give the readings of the stakes that you found at point N, reading any that you put there yourself, on September 9, 1902?

A. 2-inch square pine stake, scribed NW. Cor. Two willows one broken in two, no writing visible on either, small stone mound around same. A 2x2 pine stake 2x2 pine stake compare in size, character and its inscription with a similar stake found at point G. Those stakes were there when I went there in September 9th.

Q. When did you survey the point marked J if you ever did?

A. That was surveyed on June 23, 1901, while I was surveying No. 2 East Fork claim for Schue and Williams.

Q. Will you please give me the readings that you found there on June 23, 1901?

A. The point J on the map was indicated in my field-notes by the figure 5. At that time I did not take the size of the stakes or the kind of wood, just the inscription as follows: NW. corner stake of Moonlight claim No. 2, located January 7, 1899, E. O. DePue by C. L. Spanggard; another stake marked stake No. 2 NW. corner, located January 7, 1899; an-

(Testimony of Arthur Gibson.)

other stake no name given; another stake scribed S-4 N. W. C. Napa.

Q. Please give the stake readings at point K as found by you [139] in your survey of June 23, 1901?

A. One stake with some old writing on it. All I could read was Span. Another stake marked NW. Cor. of Excelsior placer mining claim, located Feb. 7, 1900, by George L. Rhodes. Two stakes, one old and one new, with the same markings on. Stake scribed S. E. C. E. P. M. C.

Q. Do you know what that stands for?

A. Southeast corner Excelsior placer mining claim.

(Witness continuing:) I also found stake No. 2 of Oakland placer mining claim, southwest corner stake, Mrs. M. E. Mourray that was lying on the ground. Another stake that was scribed initial S-1 N. E. C. of the Napa; that was lying on the ground too.

Q. Did you tie any stakes or read them, lying east of point L, in the neighborhood of sixty or one hundred feet? A. I did.

Q. Will you please tell me what number in your field-notes illustrates that point?

A. Which point?

Q. That point I have asked you about, lying from 60 to 100 feet easterly from the point L?

A. It is indicated in my field-notes by the figure 14; and lies 62.9 feet from L.

Q. Will you please read to the Court the stakes that you found at that point, as indicated by figure

(Testimony of Arthur Gibson.)

14 in your note-book in September, 1902?

A. Old willow, no writing visible; it was blazed off on two sides; old willow, three face, no writing visible; 2x21½ pine stake scribed NE. Cor., marked with pencil E. Carlson claim. A stone slab 16x31½x20 standing up against last named stake; 11¼x2 inch pine [140] stake, that was a new stake, marked with pencil E. Carlson NE. Cor. stake. That is all.

Q. Mr. Gibson, did you ever survey from the point 14 to the point J as indicated by Plaintiff's Exhibit "A"? A. No, I did not.

(Witness continuing:) Approximately it is about 100 feet. I have surveyed the distance between points G and H, that distance is 608 feet.

Q. And the place where the Carlson claim is shown on this map, Plaintiff's Exhibit "A," is 608 feet west of where you found the Carlson claim?

Mr. SCHOFIELD.—Objected to as immaterial.

The COURT.—Objection sustained, to which ruling of the Court the defendants then and there excepted and the exception was allowed.

Q. Did you make any plat of your field-notes illustrating the lines of the different claims that are now represented on this map, Plaintiff's Exhibit "A," at the time or about the time, you made the survey?

A. I did to a certain extent.

Q. This plat that you have handed me, what page is that in your field-book?

A. Page 20, book No. 6.

Mr. GILMORE.—I offer, if the Court please, page 20 of the witness' field-book No. 6, together with

(Testimony of Arthur Gibson.)

pages 18, 19, 21, 22 and 23, being the plat identified by the witness and the stake readings that the witness has referred to in his cross-examination.

The COURT.—The book will be admitted in evidence, marked Defendants' Exhibit 5; the plat referred [141] to on page 20 will be received in evidence and marked Defendants' Exhibit 6. Said exhibit being as follows: [142]

[illegible]

Page 18

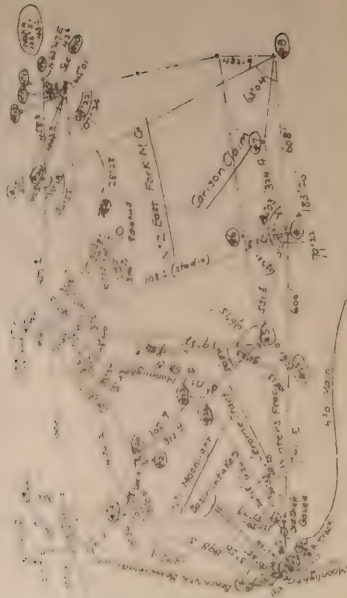
Bench No 1 Moonlight Creek
Cabernome R.D. Alaska.
Loc^d Jan 3rd 1899 by Andrew Jensen

Page 23

Grant & Napa Claims
on Moonlight Creek C.N.R. D. Alaska
Sept. 30th 1902.

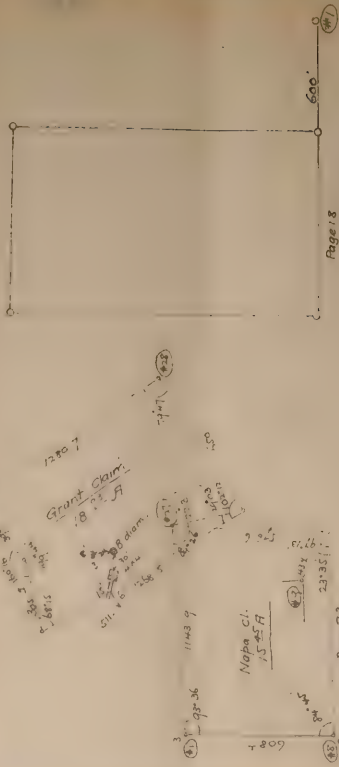
Napa cl.
1545A

Defendant's Exhibit 5786.



Page 20

Adverse cl. at head of Moonlight Creek, Upper Rec Dist., Alaska Sept. 9th 1902



Page 18

Section No. Moonlight Creek
Cape Nome R.D., Alaska.
Lined Jan 31 1899 by Andrew Jensen

Page 23

Grant & Naga Claims
on Moonlight Creek, C.N.R. D. Alaska
Sept. 30th 1902

Defendant's Exhibits "586"

Page 22

2'x4' pine. S.T. Mp" N° 5t / Stone md/

2'x4' pine. S.T. MS' E Corner B^h N° 6 / 2 old willows, wg. ill / large sod. md.

2'x4' pine empty box nailed onto same, no wg. / Large sod md

4 Lime stone slabs on top.

2'x4' pine blank / Old willow, 2f blank / Sod md.

2'x4' pine, Mp' N.W. Cor. Riparia pl. mine / Small md.

2'x4' pine. MI 2' Mp' S.W. Cor St. W.N. Grant locⁿ Jan. 9 - 1899 /

ge sod md/

2'x4' pine. Mp' wg. ill. / 2'x4' pine S.T. M' S N° 3 J.F. /
bc.

2'x4' pine, S.T. Ms' S N° 2 M.B. /

2'x4' pine, S.T. Ms' S N° 4 M.B. /

2'x4' pine. S.T. Ms' S 4 NAPA / Driftwood st. wg. ill. / Willow fresh wg.

NW. Corn st. Eagle cl. loc^d Jan. 3 - 1902. Jas. Horey, W^m ~ ? /

H²O L. N. on top of st. in slit

2'x3' pine, MI 4_p N.E. Cor st. W.N. Grant. Locⁿ Jan 9th 1899 / small

low, blank / Both above st^s in large md / Willow no wg visible identif^d

Mr Kingobury as Grant old st. /

Defendant's Exhibits '586"

Page 19

Page 21

Page 22

[illegible]

(7) Willow of Mp 31 N^o 4 N^o 10 Darcy cor. 2/4th Blount writing illegible 1/2 x 2 1/2 pine Mp 31 N^o 1. St.
2 x 0 of Electric Co² Loc² 1st Jan. 1901. 336 Each side of this St. 1/2 B 2 1/2nd Loc² G.L. Hamilton
Tin can on top contg. L N. for said claim.

(8) 2 x 2nd pine. M^o 3 SE Cor² E Carlson 1/4 x 1 pine, blank/old willow wq. 1/4/old willow
wq. 1/4/1/2 x 2nd pine M^o 3 SE Cor² 2nd zero of 1/2 x 2nd pine M^o 31 St the Johnny F^o Cl² 1 1/2
willow M^o 3 N W Cor² N 1st ab. Discy B^o F^o 1/2 x 2nd pine. M^o 31 N^o 2/Lucky F^o May
5th 1902, 1/2 x 2nd pine blank/md a 2 x 2nd pine. M^o 3 SE C^o napa/Driftwood St. M^o 3 - ?

(9) 2 x 4th pine. S.T. M^o 3 N^o 2 St. 1st Stone md/

(10) 3/4 x 1 1/4 pine, repl. E. Carlson old St./

(11) 3 willow 1/2 x 2 pine, wq. 1 1/2

(12) Bunch of St 5th no bearing.

(13) 1 ag^o e. cl. E. Ont St.

(14) old willow, no wq. visible, 2nd old willow 3rd no wq. visible, 2 x 2nd pine M^o NE Cor²
M^o 3 Carlson cl/Stone slab 16 x 3 1/2 x 2nd standing up against 1st St.
named St 1/4 x 2nd pine, (new) M^o 3 E Carlson N.E. Cor. St 1st

(15) 2 1/4 pine M^o 3rd M^o 3 SE Cor² S.W. Grant Loc² Jan. 9. 1899/2 x 2nd pine M^o
N^o 2. M^o 11th F^o 2nd largem^o old willow, if now. visible.
[2 x 2nd pine S.T. M^o 3 N^o 3 MB].

(16) 2 x 2nd pine, M^o 3 N^o 1 Cor² old willow, broken, no wq. visible on either/ small St

(17) old Driftwood St M^o 3 SW² St 1st E.P.M.C. 1 1/4 x 2nd entp. 3/4 x 2nd pine.
nailed to 1st St M^o C.J. Jorgensen NW Cor² St md/

(#19) 2'x4' pine, ST. M^p. N° 3 St / Stone md,
(#19) 2'x4' pine, ST. MS E Corner Bⁿ N° 6 / old willows, wg. ill. / large sod, md
(#20) 2'x4' pine empty box nailed onto same, no ng! Large sod md
with 4 Lime stone slabs on top.
(#21) 2'x4' pine blank, Old willow, 2' blank / Sod md
(#22) 2'x4' pine, M^p N W Cor Riparia p^e mine, Small md
(#23) 2'x4' pine, Mⁱ 2' M^p S.V. Cor St. W.N Grant loc^s Jan^y - 1890;
Large sod md!
(#24) 2'x4' pine, M^p wg. ill. / 2'x4' pine ST. M^p S N° 3 J.F. /
bc
(#25) 2'x4' pine, ST M^s S N° 2 M.B. /
(#26) 2'x4' pine, ST M^s S N° 4 M.B. /
(#27) 2'x4' pine, ST M^s S 4 NAPA / Driftwood st. wg. ill. / Willow fresh wg
M^p NW. Com St. Eagle c loc^s Jan^y 3, 1902. Jas. Horey, Wm ~ 7 /
H O L N on top of st. in slit
(#28) 2'x4' pine, M^x _{tp} N E Cor St. W.N. Grant Loc^s Jan^y 1890 / small
willow blank / Both above st ± in large md / Willow no wg visible identified
by Mr Kingsbury as Grant old st,

(Testimony of Arthur Gibson.)

Q. Now, please examine the blue-print that I hand you and state who made the blue-print.

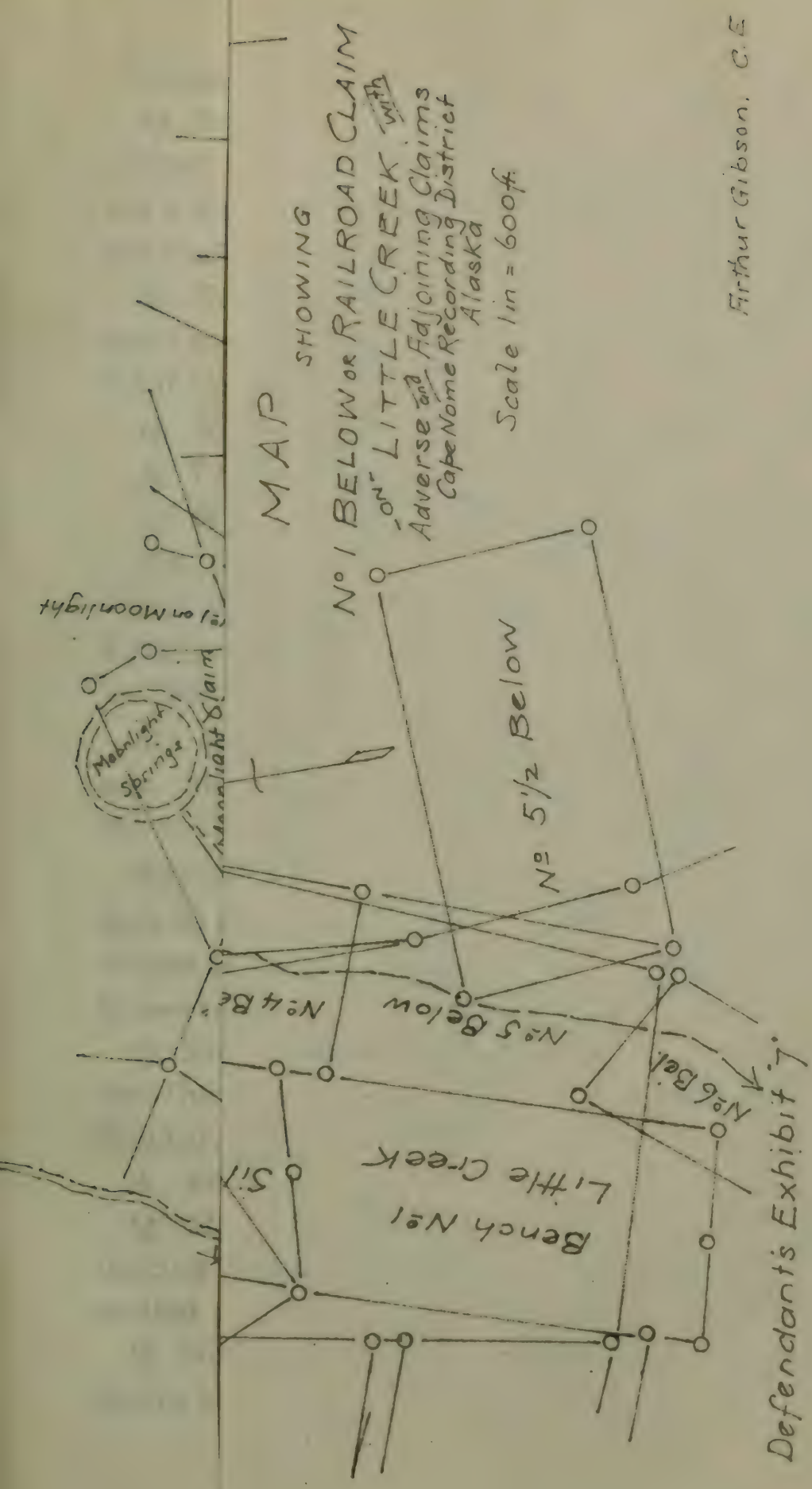
A. I did.

Q. And state if it was made by you from surveys upon the ground of various points, objects and claims therein depicted. A. It is.

Mr. GILMORE.—I offer in evidence this blue-print, if the Court please, for the purpose of showing that the claims depicted on exhibit “A” are not in their correct position according to the surveys made by the witnesses on the ground.

Mr. COCHRAN.—We object to it, as not tending to contradict the witness, being incompetent, irrelevant and *material* and not proper cross-examination.

The COURT.—Objection overruled. Map may be received in evidence and marked Defendants’ Exhibit 7. Said exhibit being as follows: [145]



Arthur Gibson, C.E.

(Testimony of Arthur Gibson.)

Q. Now, Mr. Gibson, in the plat that has just been offered in evidence what points on this map, Plaintiff's Exhibit "A," corresponds to the lower end of the Carlson claim on the blue-print? A. H and G.

Q. Now, Mr. Gibson, please examine the exhibit I hand you, being a blue-print, and tell me if you know what that is? A. Yes, sir.

Q. Who made that map or blue-print, if you know?

A. I did. [147]

Q. When did you make it? A. 1902.

Mr. GILMORE.—I offer it in evidence, if the Court please, for the purpose of showing the Bob Lyng or Moonlight claim as surveyed by the witness in 1902.

Mr. SCHOFIELD.—Objected to as incompetent and immaterial. Witness has not stated that it shows the boundaries of the Bob Lyng claim.

The COURT.—The witness drew those lines, if he says he made it he ought to know what it represents. Unless you can prove those lines are correct, it won't be received.

Q. Now, does this blue-print represent No. 2 Below Good Luck as surveyed by you on the 14th of October, 1901, for D. W. McKay, the owner?

A. Yes, sir.

Q. At what time did you get your information for making the Moonlight claim in the shape it is given on that plat? A. I never did.

Q. How did you come to draw it at that time as shown here?

(Testimony of Arthur Gibson.)

A. That was left over after I surveyed for D. W. McKay.

Q. You made that from guess, did you?

A. He claimed up to there.

Q. Will you tell me, Mr. Gibson, how you got the courses and distances to the fraction of a foot between the stakes? A. By measuring.

Q. Oh, then, you did survey it?

A. I surveyed McKay's claim.

Q. Did you survey the Bob Lyng's claim? [148]

A. No, sir, I did not.

Q. How did you get the distances from the point of the McKay Bench over to what is called the initial stake, 209.9 feet?

A. That is the survey of Bench No. 1 Moonlight.

Q. This course here? A. Yes.

Q. You got that at the time you surveyed Bench No. 1? A. Yes.

Q. When did you do that? A. September, 1902.

Q. At that time did you survey all of the points shown on this map? A. No, not at that time.

Q. Did you at that time, or prior to that, on the 14th of October, 1901, survey to all the points indicated on this map or blue-print?

A. Yes, if you include the 30th of September, I did.

Q. And from this survey that you made did you make this map showing No. 6 Good Luck, Moonlight claim and Bench No. 1?

A. Well, the Moonlight claim, as I said, is what was left over after I surveyed for McKay.

Q. That is, the portion that isn't included within

(Testimony of Arthur Gibson.)

the No. 6 Good Luck, that you marked here, is the Moonlight claim? A. No, sir.

Q. What portion is it?

The COURT.—The witness I think has said that it was left over after he surveyed. [149]

Q. I want to go a little further, did you deliver this map to the plaintiff the Pioneer Mining Company, or a copy of it? A. No.

Q. Never did? A. Not that I know of.

Q. Isn't it a fact that you made a map for the Pioneer Mining Company showing the boundaries of the Bob Lyng claim just as they are given on this plat? A. I don't think I have.

Q. Didn't you give the Pioneer Mining Company a copy of it in 1902 or 1903? A. No, sir.

Q. Please examine Defendants' Exhibit No. 7.

A. Yes, sir.

Q. And tell me if it was not a fact that Bob Lyng and Moonlight claim on the exhibit is identical with the Bob Lyng or Moonlight on this one that I hand you?

Mr. SCHOFIELD.—Objected to as incompetent and immaterial.

The COURT.—You have gone far enough, objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

Mr. GILMORE.—I offer this blue-print in evidence, if the Court please, and offer to show that so far as the Bob Lyng or Moonlight claim is concerned it is an exact copy of Defendants' Exhibit 7.

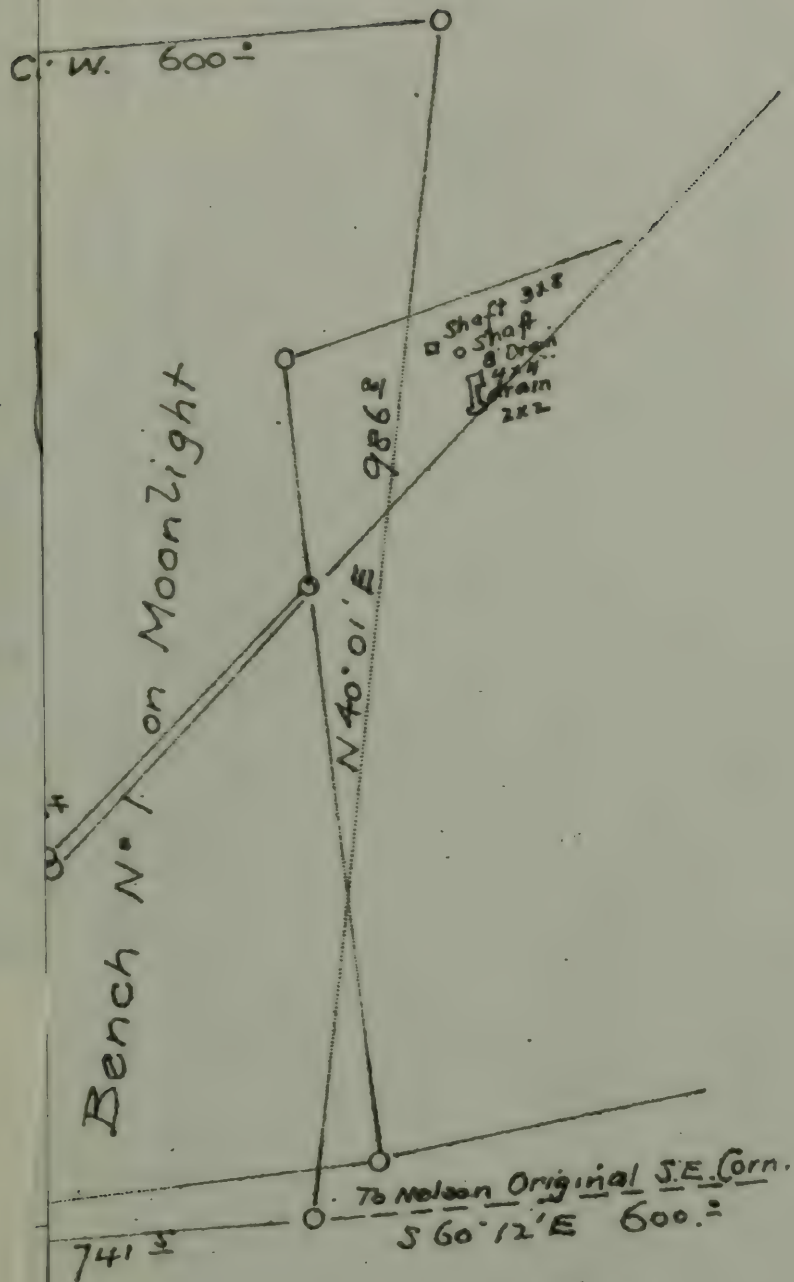
(Testimony of Arthur Gibson.)

Mr. COCHRAN.—We resist the offer on the ground that [150] it is immaterial and irrelevant.

The COURT.—The offer is denied. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

Mr. GILMORE.—I ask the clerk to mark the blueprint or map offered, Defendants' Exhibit 8 for Identification.

The COURT.—The clerk may mark it Defendants' Exhibit 8 for Identification. Said map or exhibit being as follows: [151]



Surveyed by Arthur Gibson C.E.

Map
showing claims
adjoining
Moonlight Claim
Cape Nome Recording District
Alaska.
Scale 1 in = 100 ft.



number 8 for identification

Surveyed by Arthur Gibson C.E.

(Testimony of Arthur Gibson.)

Q. Now, Mr. Gibson, is there any claim marked on Plaintiff's Exhibit "A" drawn in deep or black lines that correctly represents any claim as surveyed by you on the ground, if there is, please tell me which one? A. I surveyed them all on that map.

Q. Your answer is not responsive, do you understand the question?

A. If you state the corners of any particular claim.

Q. No, sir, I am referring to the claims as depicted here in black lines or letters, is there any claim on that map drawn by you from actual surveys on the ground? A. There certainly is.

Q. Which one?

A. They are all drawn from actual surveys.

Q. When did you ever survey No. 6 Below Good Luck in its present form as shown on that map, running from Z-1, Z-2, P and Y?

Mr. SCHOFIELD.—Objected to as having already been gone over.

The COURT.—Objection sustained, to which ruling of [153] the Court the defendants then and there excepted and the exception was allowed.

Q. You have taken a great interest in this lawsuit, haven't you?

A. I always take an interest in my work.

Q. You attended the taking of depositions in this case, did you not?

A. I did at the request of the attorneys.

Q. You attended the taking of the deposition of Mr. Kingsbury in my office just before the close of navigation? A. I did.

(Testimony of Arthur Gibson.)

Q. And sat alongside of counsel and made suggestions of what questions to ask, didn't you?

A. Made one suggestion and you all jumped on to me for it.

Q. And you coached the attorneys did you not with information of what to ask Mr. Kingsbury when the deposition was taken?

Mr. LOMEN.—Objected to as incompetent, irrelevant and immaterial and assuming something not in evidence.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

Q. Did you not coach the attorneys at that time in the same deposition for the purpose of informing them or giving them questions to ask Mr. Kingsbury?

Mr. LOMEN.—Objected to as immaterial, incompetent and irrelevant and assuming something not in evidence.

The COURT.—Objection sustained, to which ruling of the Court the defendants then and there excepted and the exception was allowed. [154]

Q. Were you paid for appearing at my office and suggesting questions to counsel to ask Mr. Kingsbury at the time of the taking of the deposition, at two different times?

A. Whatever work I do for the Pioneer I charge up the time.

Q. Just answer the question, were you paid or are you to get paid for those two days' work?

A. I presume I will get paid for what work I do.

(Testimony of Arthur Gibson.)

I always get paid.

Mr. LOMEN.—Answer the question.

Q. Do you expect to be paid if you have not already been paid? A. Yes, sir.

Q. Please examine this exhibit that I hand you and tell me, if you know, what it is? A. Yes, sir.

Q. Do you know what it is? A. Yes, sir.

Q. Who made it? A. I did.

Q. And state whether or not it was made from surveys made by yourself? A. It was.

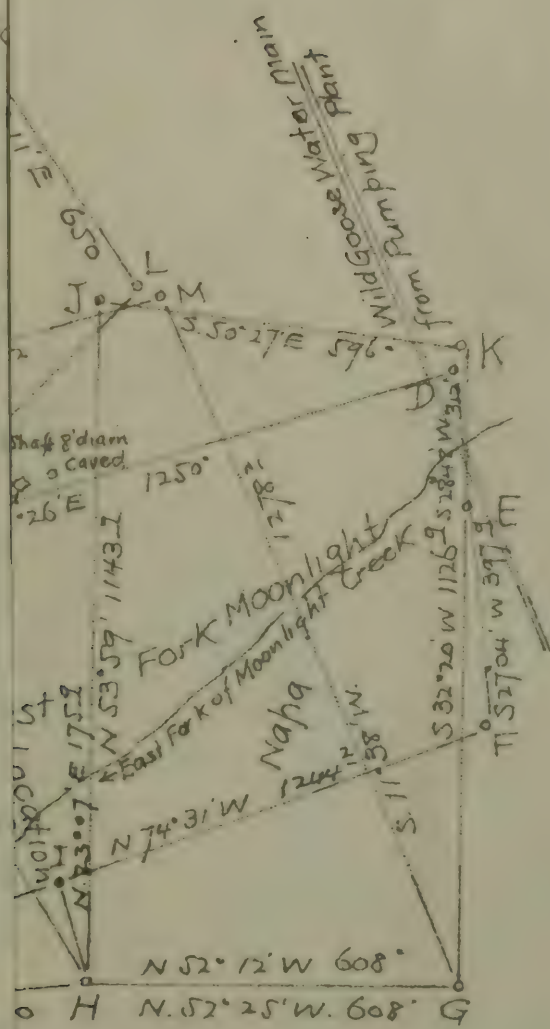
Q. When? A. 1901 and 1902.

Mr. GILMORE.—I offer this exhibit that I have just handed to the witness in evidence.

Mr. COCHRAN.—We have no objection.

The COURT.—It may be received in evidence marked Defendants' Exhibit 9. Said exhibit being as follows: [155]

30

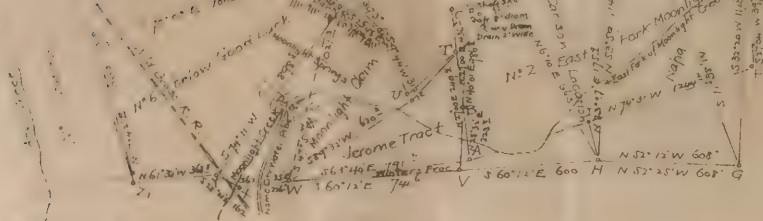


17

1

1

1881



Exhibits exhibit 'g'

(Testimony of Arthur Gibson.)

Q. Do you know Mr. McCumber, the defendant in this lawsuit? A. I do. (Continuing:)

him in September, 1908, he and I alone being present on the ground.

Q. I will ask you if, while out there on the ground in controversy, whether or not you stated to Mr. McCumber, "I cannot understand how the No. 1 Bench could overlap the Moonlight claim or Good Luck claim; and the Jerome Fraction is in there too," or words in substance to that effect.

A. No, I never said any such a thing.

Q. Did you state that in substance to Mr. McCumber? A. No.

Redirect Examination.

Q. What did you say in that conversation, if you had any?

A. Mr. McCumber asked me what my opinion was of the fraction between the Moonlight No. 1 and the Grant claim, and I told him to stay off the conflict. He apparently had a lease on the Grant claim; I told him to stay off the conflict and save his money.

(Continuing:) That was in October, 1908. We were standing somewhere there on top of the terrace where the cabin is, or below it on the ground in conflict.

Q. Now, Mr. Gibson, the map, Exhibit 7, was that made for the Pioneer Mining Company?

A. No, sir.

Q. Now, this last exhibit, Defendants' Exhibit 9, state to the Court whether or not Bench Claim No. 1 Moonlight as shown on that exhibit is any different

(Testimony of Arthur Gibson.)

from the claim as shown upon Plaintiff's Exhibit "A."

A. It shows the Moonlight Bench No. 1 exactly as surveyed in [157] 1902 as it appears in Plaintiff's Exhibit "A."

Q. Now, the Carlson location, what represents the Carlson location upon that plat, what figures or letters represent the Carlson location?

A. H, N, M and G.

Q. Now, on Defendants' Exhibit 7, Mr. Gibson, referring to what is called the Carlson claim here, what do those two triangular lines represent running northerly from below where the writing Jemie, Lucky or Gaffney Fraction is, what do those lines represent?

Mr. GILMORE.—Objected to as being wholly immaterial.

The COURT.—Objection overruled, to which ruling of the Court the defendants then and there excepted and the exception was allowed.

A. The Carlson location as indicated, the Carlson lines as I know them on the ground.

Q. Both lines? A. Yes.

Recross-examination.

Q. As you saw them on the ground, you mean now, within the last few years? A. No, at that time.

Q. For whom did you make the map marked Defendants' Exhibit 9? A. What?

Q. For whom did you make the map marked Defendants' Exhibit 9?

A. For Fred Williams and Billy Schue and Rutter, owners of No. 2 East Fork. [158]

(Testimony of Arthur Gibson.)

Re-Redirect Examination.

Q. You started to state something to Mr. Gilmore in relation to some stake that you didn't testify to, do you recall what stake that was, Mr. Gibson?

A. I do.

Q. Just state what stake you referred to and what it was and where it was?

A. It was a stake at 8, an old willow, two face, no writing visible, identified by Mr. C. L. Spanggard as a Nelson stake.

Mr. GILMORE.—I move to strike out that part of the answer with reference to what Mr. Spanggard told him as hearsay and not responsive.

The COURT.—The motion is denied. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

Recross-examination.

Q. You say that you did not make map, Defendants' Exhibit 7 for the Pioneer Mining Company?

A. No, sir.

Q. You used that exhibit in your affidavit in the case of Pioneer Mining Company vs. J. C. Brown, did you not?

Mr. COCHRAN.—Objected to as immaterial and not recross.

The COURT.—Objection sustained, to which ruling of the Court the defendants then and there excepted and the exception was allowed. [159]

Testimony of Thomas Lyle, for Plaintiff.

THOMAS LYLE, a witness called on behalf of plaintiff, being first duly sworn, testified as follows:

My name is Thomas Lyle. I live in Nome. I have lived in Nome twelve and a half years with the exception of two winters in 1900 I went out and came back in 1901; went out in the fall of 1903 and came back in 1904. My business is mining. Have been engaged in mining since coming to Nome. I know the ground in the vicinity of Moonlight Springs somewhat. I know the claim called No. 2 East Fork of Moonlight. I first knew or became acquainted with that claim in June, 1899. Jess Rutter told me about the claim. I went out early in June with him to do some work, put some drift poles on the claim.

Q. Step up to the map upon the wall, Mr. Lyle, and point out to the Court the westerly boundary line. (Referring to Plaintiff's Exhibit "A.")

A. Right here.

Q. At B?

A. Yes, the NW. Corner at C; the SW. Corner at A. (Continuing:) I think it was on June 7th, the day before the whalers came in, that year, 1899, that I went out with Rutter to set other stakes upon that ground. At that time I was down to the point 8, being the SW. Corner of No. 2 East Fork Moonlight. After the stakes were set we came back to that corner.

Q. Now, state to the Court whether or not you saw any other stake or stakes near where you placed the southwest corner of No. 2 East Fork Moonlight.

(Testimony of Thomas Lyle.)

A. In going out to the claim, we came to this stake here.

Q. Came to a stake where?

A. At the SE. Corner of Moonlight No. 1 Bench.
[160]

Q. How far was that from where the southwest corner of No. 2 East Fork Moonlight was?

A. Well, there was no stake at that time at the southwest corner of No. 2 Moonlight.

Q. How far from that stake of Bench No. 1 on Moonlight, the southeast corner, did you state the southwest corner of No. 2 East Fork Moonlight was?

A. About 50 or 60 feet. Rutter set the stakes there himself.

(Witness continuing:) He set it in. I examined the stake which I found at the point V; it was a stake 2½ to 3 feet high, blazed on one side with an ax or hatchet.

Q. Did it have any marks upon it?

A. Marked with black lead pencil SE. Corner No. 1 Bench Moonlight.

Q. Now, have you been out on that ground since that time? A. Yes, several times.

Q. Have you been there recently?

A. About six weeks ago.

Q. State whether or not you were at the southeast corner of Bench Claim No. 1 on Moonlight?

A. I was. (Continuing:) I was also at the southwest corner of No. 2 on East Fork Moonlight.

Q. State to the Court whether or not the southwest corner of No. 1 Bench on Moonlight, as you saw it

(Testimony of Thomas Lyle.)

about six weeks ago, was in the same position as where you saw it in 1899 on the 7th day of June.

A. About the same position, as near as I could judge, being a long time ago.

Q. What stake, if any, did you set on the westerly boundary line of No. 2 East Fork Moonlight? [161]

A. Set the northwest corner stake, helped to set the initial stake, that is put a new initial stake in there in place of the one that was there when we went out.

(Continuing:) We set the initial stake with reference to marks of other claims at the point B as shown on the map. We lined it off from the southeast corner stake of Bench No. 1 Moonlight to a stake that was away up on the hillside.

Q. What stake was that on the hillside?

A. I didn't know at that time.

Q. Did you after?

A. About a month afterwards I went past that corner.

Q. Did you ascertain what corner it was?

A. I did.

Q. What corner was it?

A. Northeast corner Bench No. 1 Moonlight.

Q. What did you line that initial stake of Moonlight Bench No. 2 with?

A. Lined it with the east side line of this No. 1 Moonlight.

(Witness continuing:) After putting in the initial stake there we put in the northeast corner stake of No. 2 Moonlight; we also put a stake at the point C.

(Testimony of Thomas Lyle.)

Q. Now, from the point C, where you put this stake, could you see from this point here, could you see the northeast corner stake of No. 1 Bench?

A. I could not.

Q. Why?

A. On account of a ledge or bank, whichever you like to call it, right at the northward of that stake.

Q. Have you been familiar with this corner stake C of No. 2 East Fork Moonlight since?

A. Yes. [162]

Q. Is it there yet?

A. Not the one that I placed there.

Q. Is that corner still marked?

A. That corner as near as I could get to it by that bank at the present time.

Q. Do you know one Andrew Jensen?

A. I know him by sight, I wasn't very well acquainted with him.

Q. Did you see him in the vicinity of this claim?

A. I didn't.

Q. When you were out there in June, 1899, state whether or not you saw any work that had been done recently near or within the vicinity of where you placed the northwest corner stake of Bench No. 2 or No. 2 East Fork Moonlight?

A. To the west. (Continuing:) I saw fresh work, it was about between 75 to 100 feet to the west of the Northwest corner stake of No. 2 East Fork Moonlight, and I should say a little to the west of the railroad, where the railroad is at the present time, somewhere right in this vicinity, near where the figure 1

(Testimony of Thomas Lyle.)

is shown on the map. I was out there one day when Captain Hill had an option on No. 2 East Fork Moonlight.

Q. When were you next on the claim after putting the stakes on No. 2 East Fork Moonlight?

A. On the 7th of July, 1899.

Q. How do you fix the date?

A. Well, I was bound for Boulder Creek, with a man named Tom Duffy; I don't know as I can fix the time by anything.

(Witness continuing:) We were in the vicinity of the claim; we [163] came over down here and across over to this bald knoll above the springs and then dropped into Anvil about 5 Above.

Q. At that time did you make any examination of any stakes of the Moonlight Bench Claim No. 1?

A. Yes, I did. (Witness continuing:) We passed up here through these stakes here, and at that time I went up to see what stakes those were up on the hillside; that was the time when I noticed it was the northeast corner, and there was a willow stake between 2 and 3 feet high, I don't know the diameter, maybe 1½ or 2 inches. It was blazed off with an ax, marked with a lead pencil, marked NE. Corner Bench No. 1 Moonlight. It had no other marks on it. There was another stake standing alongside of it.

Q. Was there any marks on that stake?

A. Just mentioned NW. Corner, don't know what claim it was for.

Cross-examination.

I was mining in June, 1899. I came here in March,

(Testimony of Thomas Lyle.)

1899 by dog team. I did not stake any claims in the vicinity of Moonlight. I was out on the ground about six weeks ago. I did not see any of the old original stakes. I saw a stake at the NE. Corner of Bench claim No. 1 on Moonlight and I believe it is in the same position as when I saw it in 1899. I came here in March, 1899, left a man here to stake for me and went back to St. Michael for more grub; he was the man who was a witness on location notice of No. 2 East Fork Moonlight, his name was [164] Jack Kail. On the 6th of June, 1899, I went out to help him out with his stakes and staked the claim in the proper manner as near as we could. We took six stakes out there that day and placed them. We started in at point B on the map, Plaintiff's Exhibit "A," and went north, I went north and Jess Rutter went south. We passed close by the point "A" and stopped at B to line up our initial stake. The ground is higher at the point C than it is at the point V. It is kind of flat down between V and B, not much difference there at all. We were lining up to connect with the east side lines of the claims. There was only two stakes on the claim at that time. The initial stake a willow stake, and another. There was no stake at point A or C. There was a stake at point B. Jess Rutter came down to A and I went up to the point C. We stopped at point B to find the initial stake as it was up amongst some willows. There was a willow stake at the point V about 2½ or 3 feet high and about 2 inches in diameter, with writing on it "SE. Cor. Bench No. 1 Moonlight."

(Testimony of Thomas Lyle.)

Q. All written out?

A. All written out. (Continuing:) I didn't see that stake when I was out there recently. I have lived in this vicinity ever since 1899. I have been out there on the claim several times. I wasn't looking for stakes always on the Bench claim, I was interested more with that No. 2 East Fork Moonlight.

Q. When was the first time you found out that that stake wasn't there?

A. I think that one within the last twelve months.

(Continuing:) When I saw the stake in 1899 the writing upon the stake was perfectly legible.

Q. Did you know anything about any other claim than the East [165] Fork Moonlight and No. 1 Bench at the time you were out there in 1899?

A. I did not.

(Continuing:) I was next on the ground after that on July 7th, 1899. On that day I went up to the point N. My purpose in going there was to cross over that bald knoll.

Q. What was your intention in examining that stake at the point N?

A. I wanted to see what that stake was that I had seen up on the hillside with Rutter.

(Continuing:) We had sighted from that stake but we didn't know what stake it was. I only knew it from what Rutter told me. I was not interested in the claim at all, I just wanted to make sure that that was the stake that Rutter had told me about. I wanted to see if he was right. My partner was with me on the 7th of July and he also examined the stake.

(Testimony of Thomas Lyle.)

Q. Any other stake in that vicinity at that time?

A. Yes, those two up at the NE. Corner, two willow stakes. There were two willow stakes standing there, they were small willow stakes.

Q. What was the other one scribed?

A. NW. Corner not stating any other name on it.

Q. Now, since that time have you owned any property in that vicinity?

A. Only away up on Anvil there, left limit of Anvil.

(Continuing:) I have not paid any attention to those claims since, nothing particular only on that No. 2 East Fork Moonlight. Rutter is dead for the past eight years. The man that was with me on July 7th, is captain of a boat at the present time running between Seattle and Vancouver; his name is Tom [166] Duffy. I can't tell you how many times I have been over the claim since 1899, but it is several times. I have been interested up there on Anvil creek ever since 1901 or 1902; have visited it every year since then.

Q. Where are you mining now?

A. Nowhere at present.

Q. How long since you have been engaged in actual mining?

A. Well, actual mining ever since I have been here.

Q. I have already asked you the question, but I wish you would give me the exact writings that were on the stake at V?

A. "SE. Corner Bench No. 1 Moonlight."

Q. Now, the exact writing on the stake at point N?

(Testimony of Thomas Lyle.)

A. "NE. Corner Bench No. 1 Moonlight." [167]

Mr. COCHRAN.—We now offer in evidence the deposition of C. J. Jorgensen, as follows:

Deposition of C. J. Jorgensen.

Direct Examination.

My name is C. J. Jorgensen. Age 55; residence, Nob Hill Avenue, Seattle, Washington. My occupation is master mariner. I am acquainted with the Jensen Claim, the Carlson Claim and the DePue Claim. The Jensen claim is the same as the No. 1 Bench Moonlight. The Carlson claim was located by Mrs. Carlson. I do not know the other locators, only Jensen, which was on the notice, and DePue. I am not personally acquainted with them. No. 1 Moonlight was located by Jensen; the Carlson claim by Mrs. Carlson and the Depew claim by Depew. The Carlson claim was located in 1899, in the spring; I don't know the exact date; the others, I don't know when they were located, I suppose the records show that. They were located by corner stakes, one stake at each corner, when I first saw them, but the Carlson claim besides the stakes, had a hole dug down probably a foot deep and two feet across, and a stake alongside of the hole at the northwest corner. That would be at the northeast corner of the No. 1 Moonlight. The others the corners were marked with willow stakes. The stake at this first corner was a willow stake at the time I first saw it. Afterwards I put in other corners myself on the Carlson claim; I put them in the further corners where the willow

(Deposition of C. J. Jorgensen.)

stakes were, and also left the willow stake in. I put 3x3 sawed timber in on each corner. The claims lay parallel with one another on No. 1 Moonlight Carlson and DePue adjoining one another on both ends, parallel lengthwise. No. 1 Bench Moonlight and [168] the DePue had the Carlson between. I have been up on the Carlson claim probably three or four times every year since 1899, sometimes more. Several times I have done assessment work and was along with my men, done the assessment work on the Carlson claim and so was very well acquainted with it, and knew the stakes and the lay of the ground. What I am testifying I know of my own knowledge.

Cross-examination.

I was first on the No. 1 Moonlight claim in the month of July, 1899. In that vicinity I knew the Carlson claim, No. 1 Moonlight and the DePue claim. I examined all three of the above mentioned claims. They were marked with willow stakes except the northwest boundary between the Carlson claim and the northeast boundary on No. 1 Moonlight where the hole was dug and the dirt thrown up a little making a mound where the stakes were placed. I know the Jensen claim or No. 1 Bench on Moonlight. I examined all the corner stakes at that time in July, 1899. The corners as I have already described, each had a willow stake. I was about to buy a quarter interest in the Carlson claim at that time, so I had a reason to look up the adjoining claims and see if they lapped over or came in contact with the Carlson claim. I am not acquainted with the stakes of the

(Deposition of C. J. Jorgensen.)

Bob Lyng or Moonlight claim, I know the ground but not the corner stakes of that claim. My knowledge of the claims in that vicinity was not confined solely to the Carlson claim, I made an examination of the adjoining claims in that vicinity. I did not have any interest in any other placer claim in that vicinity other than an interest in the Carlson claim. [169]

The only map I have received or that has been exhibited to me before testifying in this deposition was the one I am referring to in the deposition, which Mr. Roberts produced before me at this time. I saw it a few minutes before coming to the Commissioner's office. The map was then in the possession of Mr. Roberts, of Roberts, Battle, Hurlburt & Tennant, lawyers.

I have received no letters from the Pioneer Company or anyone on its behalf. I have not talked to anyone before testifying to-day, except Mr. Roberts a few minutes to-day, just before coming to the Commissioner's office to testify. Mr. Roberts is of the law firm of Roberts, Battle, Hurlburt & Tennant. Mr. Roberts at that time showed me the map in question, which has been referred to in my direct examination, and asked me to examine it and see if I recognized the location of the claims from the map. That is all the talk I had about the matter. [170]

Mr. COCHRAN.—We now offer in evidence the deposition of Elizabeth Jorgensen, taken in the same manner, before the same commissioner as the deposition of C. J. Jorgensen.

Deposition of Elizabeth Jorgensen.**Direct Examination.**

My name is Mrs. Elizabeth Jorgensen, formerly Mrs. Elizabeth Carlson. I am now the wife of C. J. Jorgensen and reside at 2311 Nob Hill Avenue, Seattle. I am acquainted with the Carlson claim, DePue claim and Bench No. 1 Moonlight claim—which was the Jensen claim at that time. The Jensen claim was located by Andrew Jensen sometime in the early spring of 1899; the Carlson claim was located by John Nelson in December, 1898; the DePue claim was also located in the early spring of 1899 by DePue. The Nelson claim was first staked by myself and a couple of others for John Nelson about the 20th of December, 1898, and as Nelson did not record the claim I relocated it for myself in April, 1899. When the Nelson claim was staked it was marked by willow stakes at the four corners, and afterwards, when I located it, I put new willow stakes, and used the old stakes too, and on the northwest corner I dug a hole and threw up a little hill of dirt and put a willow stake in there, and I left the old stake standing too. The other claims, the Jensen and DePue, were marked with willow stakes. I dug the hole myself. I have been on the claims every year a couple of times, except the last three years. My knowledge is derived from personal observation on the ground. I do not know anything about the Grant claim. The Carlson claim was between the Jensen claim, the No. 1 Bench Moonlight claim and the DePue claim, and joining them and

(Deposition of Elizabeth Jorgensen.)

lying parallel with them lengthwise. The long side is north and south. [171]

Cross-examination.

I first got acquainted with the vicinity of the Carlson claim in December, 1898. The Carlson claim was first staked as the Nelson Bench in December, 1898, by me and Frank Van Leuven and Jack Dalton. I never knew about the Grant claim. I sold out last interest this summer, the last interest I had in the Carlson claim. Schofield bought half and T. A. Davies got the other half. In 1899 I was acquainted with placer claim No. 1 Bench Moonlight. I do not know the Bob Lyng claim at all; all I can say is that the Jensen claim joined the Carlson claim and the west side of the Carlson claim joins the east side of the Jensen claim the whole length and runs parallel. I was not acquainted with the stakes and boundaries of the Bob Lyng claim in 1899. I never knew the Grant claim. I never saw any stakes on that claim. I never saw any of the Grant stakes. I saw this map to-day in the Commissioner's office and I saw it down in the Alaska Building in the office of Mr. Roberts before coming to the Commissioner's office to testify. Mr. Roberts is of the law firm of Roberts, Battle, Hulburt & Tennant. I never had seen this map before that time. I have not received any letters from anyone pertaining to the suit. I only spoke a few words to Mr. Roberts just before coming up here to the Commissioner's office.

Mr. COCHRAN.—I now offer in evidence copy of the location notice of the Carlson claim testified to

by Mrs. Elizabeth Jorgensen and C. J. Jorgensen, defining the location of the Carlson claim.

The COURT.—It may be received in evidence and [172] marked Plaintiff's Exhibit "K," and is as follows:

[Plaintiff's Exhibit "K."]

"NOTICE OF LOCATION.

NOTICE IS HEREBY GIVEN that the undersigned having complied with Chap. 6, Title 32 of the Revised Statutes of the U. S. and the local customs laws and regulations has this day located on Anvil Creek as a bench claim described as follows:

Commencing where notice is posted it runs 1320 ft northerly thence 660 ft westerly thence 1320 ft southerly and from there 660 ft easterly.

Claim is situated between the bench claim of A. Jensen and DePue Cape Nome Mining District Alaska.

Located Apr. 14, 1899.

ELIZABETH CARLSEN.

Witnesses:

JOHN J. DALTON.

FRANK VON LENNAN.

Filed for record 6 P. M. May 2, '99.

A. E. SOUTHWARD,

Depty.

(Recorded Vol. 10, page 44.)" [173]

Mr. COCHRAN.—I also offer a certified copy of location notice of the same ground located by C. J. Jorgensen, September 22, 1899, testified to by him in his deposition.

The COURT.—It may be received in evidence and marked Plaintiff's Exhibit "L," said exhibit being as follows:

**[Plaintiff's Exhibit "L."]
"NOTICE OF LOCATION.**

Notice is hereby given that the undersigned having complied with Chap. 6, title 32 of the Rev. Statutes of the U. S. and the local customs, laws and regulations has this day located 20 acres of Placer Mining Ground on Anvil Mountain above Moonlight Creek—

Commencing where notice is posted claim runs 1320 ft in a southerly direction, thence 660 ft in a westerly course, thence 1320 feet northerly and from there 660 ft easterly.

Claim is between the bench claims of A. Jensen and De Pui. Cape Nome Mining District.

Located Sept. 22, 1899.

By C. J. JORGENSEN.

Witness:

JOHN J. DALTON.

Filed for record 2:15 P. M. Oct. 6—99

A. E. SOUTHWARD,
Deputy.

(Recorded Vol. 23, page 135.)"

Mr. COCHRAN.—Plaintiff rests. [174]

Defendants' Case.

Testimony of John Sundback, for Defendants.

JOHN SUNDBACK, a witness on behalf of defendants, being duly sworn testified as follows:

My name is John Sundback. I am clerk of the

(Testimony of John Sundback.)

district court at Nome, and ex-officio register of the local land office.

Q. I hand you an instrument, will you please state to the Court what it is, if you know?

A. Plat No. 608 of a claim of Jafet Lindeberg's, known as the Moonlight Bench, off Moonlight Creek.

(Witness continuing:) The number of the mineral survey is 608 and the survey is by Edward Franklin Lewis.

Q. Is that the official record from the files of the land office in your custody? A. Yes, sir.

Mr. GILMORE.—I offer that as an exhibit for identification at this time, if the Court please, and ask to have it marked for identification.

The COURT.—Let it be marked Defendant's Exhibit 10 for Identification. [175]

Testimony of Daniel A. Jones, for Defendants.

DANIEL A. JONES, a witness on behalf of defendants, being duly sworn, testified as follows:

My name is Daniel A. Jones. I am a civil engineer and U. S. Deputy Mineral Surveyor. I attended and studied at the University at Lexington, Virginia, and I have been engaged in civil engineering and surveying since 1895, and in Nome and vicinity for the last eight years. I have been a U. S. Deputy Mineral Surveyor for about a year.

Q. Mr. Jones, please refer to the map on the wall, next to Mr. Schofield there, and state whether or not you know what that map is?

A. I made the map. (Continuing:) It was made from my surveys by me on the ground. It correctly

(Testimony of Daniel A. Jones.)

represents the various claims and objects there as shown on the map from actual surveys.

Mr. GILMORE.—We offer the map in evidence if the Court please, as Defendants' Exhibit 11.

Mr. COCHRAN.—We would like to cross-examine him.

The COURT.—You may.

Cross-examination.

(By Mr. SCHOFIELD.)

Q. When did you make this map, Mr. Jones?

A. I made the surveys on the 2d, 3d, and 5th of November, this year, with the exceptions of points 10 and 11; the point 10 I surveyed in 1909 and the point 11 in 1908. (Continuing:) At the time I surveyed the Grant claim in November of this year Nick Barge, Frank Andrich and Howard Shea and Mr. Gilmore were with me on the ground. In [176] November of this year I surveyed at points 1, 2, 3, 4 and 5. I surveyed the points 8 and 9 also in November. I have my note-book of the survey, describing the stakes.

Q. What did you find at point 4?

Mr. GILMORE.—If the Court please, I do not wish this cross-examination to shut me out of going into this matter on direct, as I wish to have the right to examine him further.

The COURT.—You may.

A. 2x4x36 painted in black. (Witness continuing:) The figure 4 is painted in black on the stake. Also a 2x3x24 penciled Initial Stake No. 1 Ancient River Claim, located Nov. 2, 1911, Frank A. Aldrich,

(Testimony of Daniel A. Jones.)

locator, Howard Shade witness. Old sod mound, 6 inches square, one foot high; old willow stake two inches in circumference and about 18 inches high. I do not recall that I ever saw any of those stakes prior to the time of making this survey in November, 1911.

Q. What stakes did you find at point 5?

A. 4x4x24, scribed 1-436 M.C.; 2x3x24, painted in black figure 5; 2x3x36, no markings on it; two 2x4x24, nailed together, scribed 1-436 Corner No. 1 S. 608; 2x4x18, no markings; 2x4x36, northeast corner Bench No. 6, S. E. Bench No. 5; 2x4x18, penciled northwest corner, What's Left Fraction, located June 18, 1911, M. D. McCumber; old willow two inches in diameter, no markings; old willow one inch diameter, no marks, an old sod mound 3 feet in diameter, about 2 feet high.

Q. What stake did you find at point 1?

A. 4x4x12, scribed Corner S., other marks not discernible; 4x4x24, scribed 2-436; 2x4, with no marks; 1x2x18 no [177] marks; 2x2x18, no markings; 3x6x24, penciled initial stake What's Left Fraction, other penciled markings not discernible. Location notice attached to What's Left Fraction. There are two sod mounds at that point, about 3 feet apart, one of them 2½ feet in diameter and 2 feet high, and the other one 2½ inches in diameter, 3 inches high.

Q. And what stake did you find at point 2?

A. That is a driftwood stake, 4½ inches in diameter, scribed Corner 5; 2x4x24, letter 2 painted in

(Testimony of Daniel A. Jones.)

black. Old sod mound $2\frac{1}{2}$ inches square, 2 feet high.

Q. What does the point 6 represent?

A. A stake 4x4x24 scribed 3-436; 2x4x18, tack on top; 2x4 2 18, tack in top, no marks; 2x4x18, no marks.

Q. What did you find at the point 9 in November, 1911?

A. Stake 2x4x24, scribed stake No. 3, M.B.; 2—2x4'sx18, nailed together, scribed Corner 2 S. 608, and Corner No. 4; stake is broken off, no marks; old driftwood $1\frac{1}{2}$ in. diameter, scribed F. M. C. SW. Corner; that stake is rotted off on the top, and one letter that I couldn't make out; there is a small rock mound. Six feet north of that stake there was a 2x3x30, no markings.

Q. Did you notice any other markings on the ground marking that corner, indicated by the figure 9 on the map?

A. An old hole near this stake, that was 6 feet north of that point. (Witness continuing:) I first surveyed at the point 9 on September 15, 1909.

Q. How did you come to know point 9? [178]

A. Well, it was pointed out to me the last time I was out there as being the corner of the Moonlight claim, and I recognized the stake at that point as being a corner of the Carlson location at the time I surveyed the Carlson location.

Q. Now, when did you first see point 10?

A. That was in 1909. (Continuing:) That was while I was surveying the Carlson claim.

(Testimony of Daniel A. Jones.)

Q. What did you find at point 10, what stakes, in November, 1911?

A. 4x4x18, scribed Corner 3, S. 608, then a 2x4x18, scribed stake No. 2 M.B., that is all.

Q. When did you survey point 11?

A. Why, in 1908, I don't remember the time; I haven't those notes, and don't remember exactly the time in 1908.

(Continuing:) I was picking up the lines of the Bob Lyng claim and No. 6 Good Luck, and making a survey of the Moonlight Springs. I established point 7 by my survey of November of this year; I also remembered that point from the time I was out there before.

Q. What stakes have you, Mr. Jones, at the point 8?

A. That is a 2x4x36, scribed stake No. 4, M.B.

Q. What does M. B. stand for?

A. Moonlight Bench, I presume.

Q. Any other stakes at that point?

A. That is all. (Witness continuing:) I have no personal knowledge of the true position of the stakes at 2, 3, 4 and 5, with reference to their original settings. I surveyed on the ground at the points that were indicated to me as the stakes of the Grant claim, and tied in the railroad track on that map where it crosses the northerly and southerly boundary lines. [179]

Q. What is the distance between point 5 crossing to the track? A. 165 feet.

Q. What is this dark line crossing the westerly

(Testimony of Daniel A. Jones.)

boundary line between points 1 and 2 represent?

A. That represents the springs. (Continuing:) That was tied in by me; it is 118 feet south of point 1; it crosses the line at point 2, 118 feet south of point 1; I tied in the Moonlight Springs on this survey from point 5. I tied it in from point 5 to the intake of the pipe-line. It is represented on the map by a small circle. It is 300 feet from point 5 to the intake. I made a mistake in the schedule on there; it should be nearer to 5. I didn't take notes of the wire fence at that time; I picked up the intake of the pipe-lines and then I have drawn the rest on it for the purpose of illustration. It doesn't pretend to show the extent of the springs along that ground there in that vicinity. I may have read the wrong point, the way these descriptions are made in this book is not the same as on that map.

Q. What survey were you making when you surveyed at point 10?

A. I was supposed to be making a survey of the Carlson Bench. (Continuing:) Notes of the survey in the book are not made the same as on the map; I may have read the wrong point. I see here it is 2x3 southeast corner of Carlson claim.

Mr. SCHOFIELD.—I refer to point 10 on the map that has been offered?

A. That is a corner of Survey 608; that is all at point 10. (Witness continuing:) Mr. Sommers and myself made this survey together. Mr. Lehmann was with us; it seems to me there was [180] somebody else there but I can't remember who it was.

(Testimony of Daniel A. Jones.)

The notes in my survey-book are some in my handwriting and some in Sommer's. We took the notes together. Mr. Sommers is out of the District of Alaska this winter. When we went around to a bunch of stakes to take a description, one would read them off and one would write them down.

Q. Now, examine your note-book and see whether or not you didn't find at point 10, a stake marking the southwest corner of the Carlson claim, to wit, a board nailed on a post and marked E. C. SW. corner?

A. Yes, that is written up on top of the page here.

Q. Now, just give that marking?

A. 2x4x18, a 1x6x2½ tacked to it.

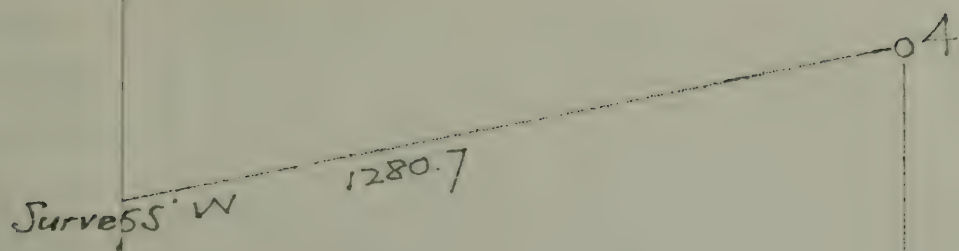
Q. How was it marked?

A. E. C. SW. corner Elizabeth Carlson claim.

Q. Any other notice at that time?

A. That is all.

The COURT.—The map may be received in evidence marked Defendants' Exhibit 11, said exhibit being as follows: [181]

N^o 1

og
Claim

A dashed line segment labeled 'og' and 'Claim'.

647.8

N 0° 11'

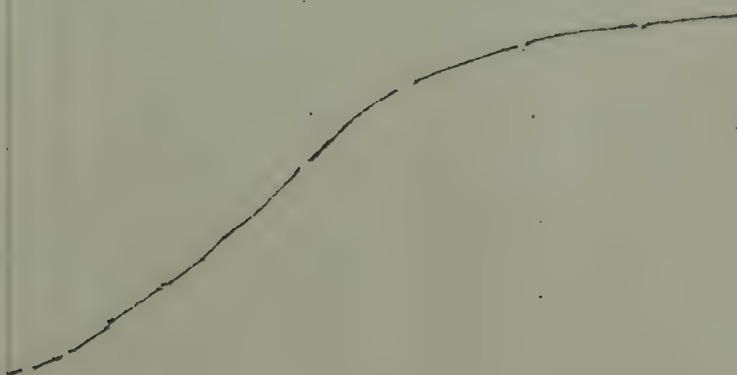
77° 55' E 1268.2

03

02

A survey line segment connecting station 03 at the top to station 02 at the bottom. The line is labeled with a bearing of 77° 55' E and a distance of 1268.2.

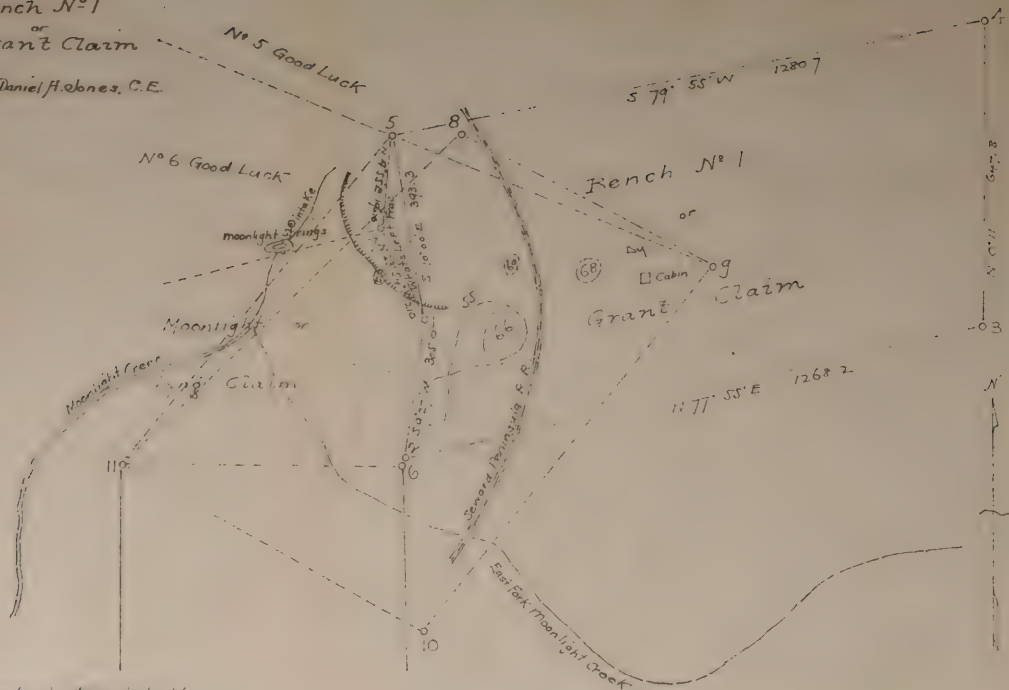
N



Map
of
Bench N^o 1
or
Grant Claim

Surveyed by Daniel H. Hobbes, C.E.

400



(Testimony of Daniel A. Jones.)

Direct Examination Resumed by Mr. GILMORE.

Q. Now, Mr. Jones, at the time you made the survey of the Grant claim and the other portions of that map, on the 2d day of November, 1911, and the succeeding days that you mentioned, state to the Court whether or not you had a blue-print along with you, made by Arthur Gibson, showing the lines of Bench No. 1?

Mr. COCHRAN.—Objected to as being irrelevant and immaterial.

Mr. GILMORE.—I don't want the record to stand unchallenged [183] that I was the one that indicated those lines and objects for him to survey on the ground. I would like to have it show in the record that at the time he made the survey he drew the points 8 and 9 from a blue-print made by Arthur Gibson, that he had with him on the ground at the time of the survey.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

Mr. GILMORE.—I now ask leave of the Court at this time, to place up on the wall Defendants' Exhibit 9, which is already in evidence.

The COURT.—You may do so.

Q. Now, Mr. Jones, will you please take your notebook and refer to point one on Defendants' Exhibit 11, the big map, the one just offered in evidence, and give me all of the stake readings, and the date you made the survey at that point?

A. I surveyed there on the second of November,

(Testimony of Daniel A. Jones.)

of this year. (Witness continuing:) I found stake 4x4x12, scribed Corner S, other markings not discernible; 4x4x24, scribed 2-436.

Q. What does that mean?

A. That means stake No. 2 Survey No. 436, Mineral Survey. (Witness continuing:) I also found two 2x4's, no marks on them; they were pine stakes, each the same size; I also found 1x2x18, no marks; a 2x2x18, no marks; a 3x6x24, penciled initial stake What's Left Fraction; other pencil marks not discernible. Location notice attached to the What's Left Fraction; [184] two sod mounds 2½ feet in diameter, two feet high.

Q. State to the Court the character of the mounds that were there.

A. They were old sod mounds. (Continuing:) I made a careful observation of those two mounds. They were two distinct mounds, three feet apart. I have given you all the markings in both of the mounds that I found there in November of this year.

Q. Now, Mr. Jones, state whether or not there is any embankment or plateau in that immediate vicinity. A. There is.

Q. In what direction from that stake?

A. It commences at a point about thirty feet north of the line 1-5, about thirty feet north of the point 1.

O. On this map, Defendants' Exhibit 11, what is the embankment represented by?

A. Represented by that shaded line.

Q. I will mark that line "21" with a circle around it, where does that embankment cross the line 1-5 from point 1?

(Testimony of Daniel A. Jones.)

A. At a point about thirty feet north of point 1. (Continuing:) I think the bank at that point is abrupt, it rises about eight or ten feet. Right at that point it is gradual, ten feet west of it it is rather abrupt and continues that way up.

Q. With reference to the ground between points 1 and 2, state whether or not there is any embankment at all there.

A. No, all flat, practically flat, general slope to the south.

Q. Notice this map over here, Plaintiff's Exhibit "A," where it says "steep bank" extending across between points S and U, do you notice that?

A. Yes, sir.

Q. Is there such a steep bank running through between S and U? [185] A. No, sir.

Q. State whether or not there is an embankment as shown on that map.

A. No. (Continuing:) It is 305 feet from point one to the point 2, the course is S. 9° 51' E. The courses are true north.

Q. Now, referring to point 2, how many mounds on the ground in that vicinity were there, at point 2 on the map?

A. There were two different bunches of stakes six feet apart.

Q. The one that you have indicated as point 2 being northerly of that point; will you please read all the stakes you found at that point?

A. Driftwood stake 4½ inches in diameter, scribed Corner 5, and a 2x4.

(Testimony of Daniel A. Jones.)

Q. Name of what claim?

A. No name. A 2x4x24, the letter 2 painted in black.

Q. What kind of paint?

A. I don't know, black paint.

Q. So as to inform the Court, what was the size of the figure painted in black?

A. I should judge three inches, to the best of my recollection. (Witness continues:) You could see the figure when quite a distance away from the stake.

Q. What was the character of the mound?

A. Old sod.

Q. Now, at point 6, being the southerly mound at that point?

A. A 4x4x24, scribed 3-436. (Continuing:) That means corner No. 3, Mineral Survey 436; 2x4x18 tack in top of it, no markings; 2x4x18, no markings.

Q. Now, Mr. Jones, explain to the Court the discrepancy between [186] the distances on Exhibits 9 and 11 between the points 1 and 2.

A. The distance I show 305 feet runs from point 1 to 2, and the distance shown in the blue-print runs from point 1 to point 6.

Q. This line in here Mr. Jones, I believe you stated to Mr. Schofield, represented a stream of water, please explain where that stream comes from and what it is?

A. Well, it is a spring, coming out of the ground. (Continuing:) I don't know whether it comes out of a pipe. The character of the ground where the water comes out has been disturbed by mining work,

(Testimony of Daniel A. Jones.)

there has been a cut, it looks like a cut, where the stream of water is; there are tailings there to indicate that work has been done at that point.

Q. Can you give the Court a fair idea of the amount of work you observed done around in the immediate vicinity of where you say the spring was?

A. From the points 6 to the point 1 and then east from the point one to the railroad track, and the railroad down to the intersection of the south line to point 6, in that piece of ground I should think there is in the neighborhood of twenty-five or thirty shafts or cuts. They were old shafts, some of them. They were two of them timbered shafts.

Q. Where were the timbered shafts that you speak of?

A. Embraced within that piece of ground. The portion I have described is approximately 300 feet square, on the southwesterly portion of the Grant claim, as I surveyed it. The general character of the surface of the Grant claim at that point, is a general slope at the southwest, and when you cross the railroad [187] track there is quite a decided rise, it might be called a plateau. The high ground, or mountainous ground of the Grant claim is in the northerly part. The general slope is from the northeast to the southwest. The general slope would be from point 4 to the point 6, as indicated on Exhibit 11. The highest ground of the Grant claim is at point 4. It is a great deal higher at the point 4 than at point 3.

Q. Read the stakes, all the stakes that you found

(Testimony of Daniel A. Jones.)

at point 3, Defendants' Exhibit 11?

A. 2x4x24, with the figure 3 painted in black; a stake 2x3x18 no marks.

Q. How did the stake with the figure 3 painted in black, compare with the stake with the figure 2 on it, at the point 2?

A. Same kind of a stake. Same character of painted figure. (Witness continuing:) The stake was placed so it was plainly visible. At the point 3 I also found a 2x4x20 with a 1x8 board attached, no markings; a 2x3x18 penciled stake, No. 4 Ancient River claim, located November 2, 1911, Frank A. Andrich locator, Howard Shade witness; then in that mound there was a willow growing, dead now, but had been a willow growing, no marks discernible.

Q. What was the character of the mound at the point 3?

A. An old sod mound, 2½ feet square by two feet high.

Q. State how that mound compares in size and shape with the mound at point 2.

A. Same character of mound. (Continuing:) It was the same character of mound as I found at point 1.

Q. From your examination of the mound at point 3, are you able to state whether or not it was an old mound, or a more recent one? [188]

A. An old mound. (Continuing:) The point 4 was on the slope of the mountain, on high ground.

Q. What did you find at point 4 when you made the survey?

(Testimony of Daniel A. Jones.)

A. 2x4x36, with figure 4 painted in black; 2x3x24 penciled initial stake No. 1 Ancient River claim, located November 2, 1911, Frank A. Aldrich locator, Howard Shade witness.

Q. Was there a willow stake at that point?

A. An old willow stake about two inches in circumference and 18 inches high.

Q. Where was that willow stake with reference to the particular stake that you describe?

A. In the mound alongside of the other stakes; there was an old sod mound three feet square, one foot high; that mound had been torn down by ground squirrels.

(Witness continuing:) That mound and the stakes in it were plainly visible. The general slope from 4 to 5 was downward.

Q. What stakes, if any, did you find at point 5, at the time you surveyed in November, 1911?

A. 4x4x24 scribed 1-436 M. C. and a 2x3x24, figure 5 painted in black and 2x3x36, no marks; two 4x4'sx24 nailed together, scribed 1-436 and Corner No. 1 S. 608.

Q. What does that mean?

A. That means Corner No. 1 of Mineral Survey No. 608.

Q. What kind of a stake did you find there on the 2d day of November of this year?

A. Two stakes 4x4's nailed together.

Q. That is the one that was scribed 608?

A. Yes, sir. [189]

Q. What other stakes at the point 5?

(Testimony of Daniel A. Jones.)

A. A 2x4x18 no marks; a 2x4x36, scribed NE. Corner, Bench No. 6 and SE. Bench No. 5; and 2x4x18 penciled NE. Corner What's Left Fraction, located June 18th, 1911, M. D. McCumber. An old willow two feet in diameter and another old willow one inch in diameter, no marks; that is all of those stakes; all of those stakes were set in an old mound 21½ feet in diameter by two feet high.

Q. How did the mound at point 5 compare with the mounds at the points 1, 2, 3, and 4 with reference to looks, age and size?

A. They were practically all the same kind of mounds.

Q. Had you surveyed the point 9 prior to the 2d day of November of this year? A. I had.

Q. And for whom did you survey prior to that time at that point?

A. I surveyed for Mr. Schofield. (Continuing:) I surveyed out there September 15, October 15th and the 27th, three days in the fall of 1909. I surveyed the Carlson claim for Mr. Schofield; that was the time that Mr. Sommers and Mr. Lehman were there with me.

Q. Who, if anyone, pointed out point 9 on the ground as being the corner of the Carlson claim?

A. Mr. Lehman did, to the best of my recollection. (Continuing:) I do not know whether Mr. Stevenson was present or not, he might have been. When I was out there on the 2d day of November this year the stakes I found there were the same at point 9 that I found in 1909, when I surveyed for Mr. Schofield.

(Testimony of Daniel A. Jones.)

Q. And those are the two stakes that you described in your examination by Mr. Schofield?

A. Yes, I read them, I think.

Q. You also at the time Mr. Schofield was asking you about point 9, told him you found a stake marked P. M. with the first letter obliterated?

A. It was also marked SW.

Q. Did you ever in any of your surveys in that vicinity, find any other stakes similarly marked?

A. I did.

Q. And what was the letter on the other stake, the letter that you say was obliterated on this one?

A. The letter E. (Continuing:) The four initials read E. P. M. C. I heard Mr. Gibson refer to this claim E. P. M. C. Excelsior Placer Mining Claim; they were driftwood stakes about two inches square, all scribed E. P. M. C.

Q. And what stake or stakes did you find at point 8?

A. 2x4x36, scribed S. No. 4, M. B.

Q. Were there any other stakes in that vicinity at that time, or at that place?

A. That was the only stake that I saw.

Q. State whether or not there was any mound at point 8, or anything to indicate a mound.

A. No, sir.

Q. How did you find the point 8 on the ground?

A. I had a blue-print that was made by Mr. Gibson and I set up the instrument at point 9 and ran out the courses and distances on that blue-print, located the point 8 and retraced the line 8-9.

Q. What is the distance, approximately, if you

(Testimony of Daniel A. Jones.)

don't know [191] exactly, between points 5 and 8, being the distance between the stake you found marked Moonlight Bench at 8, and the Mineral Survey stake 608 at point 8? A. 141.3 feet.

Q. State whether or not the Moonlight stake at point 8 and the mineral survey stake at point 5, were both at their respective points on the ground at the time you surveyed.

A. They were. (Continuing:) I surveyed to the point 7 on the map in November. I had been at that point in 1908. To the best of my recollection I tied in that point when I surveyed the Moonlight Springs in 1908; I know the placer claim known as the Moonlight or Bob Lyng claim, and know the easterly end stake or monuments of the Bob Lyng claim. They are at the points 2, 1 and 7 on my map. To the best of my recollection those points were pointed out to me as the east end stakes of the Bob Lyng claim.

Q. Who, if anyone, pointed out point 7 to you as being a corner of the Bob Lyng claim, or the Moonlight claim, and when?

A. Charlie Johnson in 1908.

Q. Who was Charlie Johnson and what position did he occupy?

A. Superintendent of the Pioneer Mining Company at that time. I think that was his official position. (Continuing:) The point 7 was marked at that time.

Q. What is the distance of the intake of the Moonlight Water Company from the Grant claim as shown on the map?

(Testimony of Daniel A. Jones.)

A. 300 feet from point 5. I think I made a mistake on the map, I have it 60 feet too far to the south, that is, the intake of the pipe. It should be where I write the word "intake" on the map. [192]

Q. Just refer to Plaintiffs' Exhibit "A," I will ask you to state whether or not there is any reservoir or dam on the ground at that point at the present time. A. No, sir.

Q. Is there any reservoir or dam in that vicinity at the present time?

A. No, sir. (Continuing:) The ground has been mined and worked out at that point by elevators.

Q. Is that a correct representation of the Lyng claim, the lower half of the Moonlight, as it now is on the ground?

A. I think it is, except there is no reservoir or dam there at the present time. (Continuing:) I surveyed the Springs in 1908 for Ira D. Orton who represented the Moonlight Water Company. That was prior to the survey I made for Mr. Schofield of the Carlson claim. I surveyed and tied in the point 10 on the map, at the time I surveyed the Carlson claim in 1909 for Schofield.

Q. You notice on Defendants' Exhibit 9, the blueprint, there is a point marked "M"? A. Yes, sir.

Q. State whether or not in November of this year you did tie in point "M" on the ground at the request of myself. A. I did.

Q. Will you please step to Mr. Gibson's map, Plaintiff's Exhibit "A" and show the Court where

(Testimony of Daniel A. Jones.)

that is, where you tied it in, as near as you can?

A. Near this point that is marked 14.

Q. And where was that point, what object, if any, was on the ground at that point, point 14, at that time?

A. None at all. (Continuing:) There was a ditch there the [193] point M would be in the bottom of the ditch. I measured from the point M to point J on the ground. It is approximately 120 feet. When I surveyed out there in September, 1909, for Mr. Schofield, I established the northeast corner of the Carlson claim at the point J.

Q. And how far, then, was that point west of the Carlson claim as shown on the blue-print?

A. That is approximately 120 feet.

Q. Where did you establish the southern end of the Carlson claim, as shown in Defendants' Exhibit 9?

A. What is shown there as the southwest corner on that blue-print, is now the southeast corner of the claim.

Q. What is the distance with reference to the width of the claim? A. About 600 feet.

Q. What is the distance on Mr. Gibson's map, from H to G? A. 608.1 feet.

Q. What is the distance on the blue-print lower end of the Carlson claim, as shown there?

A. 608.1 feet.

Q. This stake that Mr. Schofield asked you about at point V or point 10, which is supposed to correspond on the different maps, do you know when that

(Testimony of Daniel A. Jones.)

stake with the notice on top of it, board and notice on top of it, was placed there?

A. No, sir. (Continuing:) At the time I surveyed the Grant claim on the 2d of November, 1911, I found improvements on the claim. I found a cabin and numerous shafts and cuts. I found a cabin on the claim on the 2d of November, 1911; it is indicated on the map by the word "cabin." [194]

Q. Do you know the ground in controversy by reason of your surveys? A. Yes, sir.

Q. State to the Court whether or not the cabin is within the premises in controversy. A. It is.

Q. What is the character of the surface of the claim where the cabin is?

A. Right below the cabin, between the railroad track and the cabin, there is quite a decided break in the surface of the ground; it is high ground where the cabin is situated; the cabin can be seen from all parts of the Grant claim.

Q. Now, just tell the Court what kind of a cabin it is, as you recall it.

A. It is red, about 10x12 feet in size.

Q. State whether or not anyone was living in the cabin while you surveyed. A. There was.

Q. Who was it?

Mr. COCHRAN.—Objected to as immaterial.

Mr. GILMORE.—We are going to prove possession of the ground at the present time, also at the time and before the suit was started. I want to show by this witness that we had possession of the ground in controversy on the day he was there.

(Testimony of Daniel A. Jones.)

The COURT.—Objection overruled.

A. Captain Smith was living there. [195]

Q. State whether or not there was anybody working on the ground the day you were there.

A. There was. He worked between the cabin and the railroad track, a little north of the cabin.

Q. Where with reference to the ground in controversy?

A. Between the cabin and the railroad track, a little north of the cabin.

Q. State whether the work being done was within the ground in controversy. A. Yes, sir.

Q. Now, at the time you made the survey in November of this year, did you observe or tie in or make any surveys of any work done on or indicated on the surface of the Grant claim, or any portion of it?

A. Yes, I saw other work there, but I didn't tie it in.

Q. On what portions of the claim other than what you have already told the Court?

A. On the north part of the claim. I don't remember positively about the northwesterly corner. (Continuing:) The work consisted of shafts, holes and a little south of the cabin and across the railroad track, right at the foot of that terrace, there was an old shaft that from the amount of dirt and the heavy rocks outside around it, I should judge to have been 30 or 40 feet deep.

Q. Referring to the dotted lines on map, Exhibit 11, what does the dotted line represent, the line run-

(Testimony of Daniel A. Jones.)

ning from 11-10-9 and 5?

A. It represents Mineral Survey 608.

Q. And did you trace that on the map from the survey made by Mr. Lewis? [196]

A. I put it on the map and checked it by the survey made by Mr. Lewis and found it checked.

Q. And does it check with the official survey in the Land Office? A. It does.

Mr. GILMORE.—We now offer the original plat survey No. 608, identified by Captain Sundback, in evidence.

The COURT.—It may be received in evidence and marked Defendants' Exhibit No. 10, said exhibit being as follows: [197]

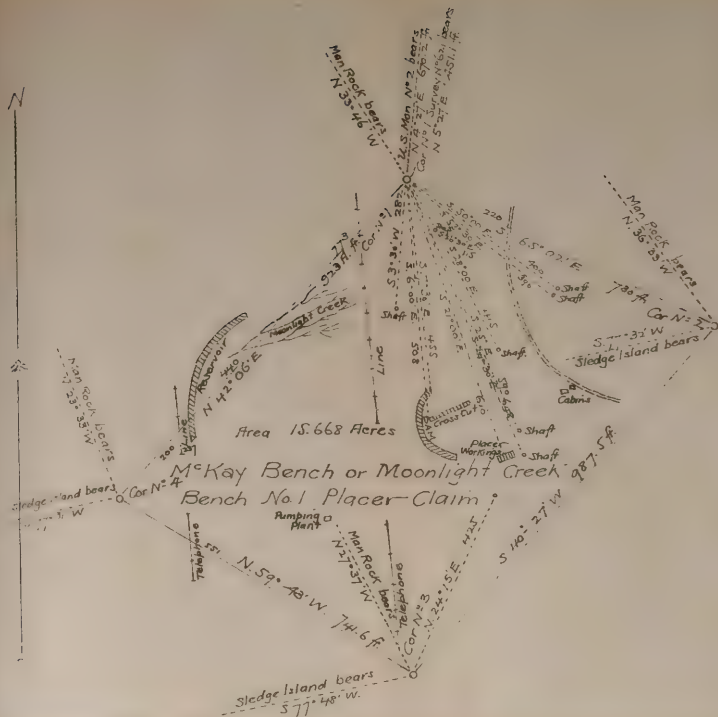
ated : January 3rd 1899
 d : January 17th 1899
 Survey No. 608
 ion for Survey : October 21st 1903
 Land District

PLAT
 of the claim of
 Jafet Lindeberg
 Known as the
 Kay Bench or Moonlight Creek Bench N^o 1
 Placer Claim
 in Cape Nome Mining District
 District of Alaska
 Containing an Area of 15.668 Acres
 Scale of 200 feet to the inch
 Variation 19° 32' E.
 Surveyed August 18, 1904 by
 Edw. Franklin Lewis
 U. S. Deputy Mineral Surveyor.

Field Notes of the Survey of the Mining Claim of
 Jafet Lindeberg

ch or Moonlight Creek Bench N^o 1 Placer Claim
 this plat has been made under my direction.
 examined and approved and are on file in this office.
 by certify that they furnish such an accurate description
 ing claim, as will, if incorporated into patent, serve
 tify the premises, and that such reference is made
 natural objects or permanent monuments as will
 e and fix the locus thereof.
 certify that Five Hundred Dollars worth of labor has
 ded or improvements made upon said Mining Claim by
 his grantors and that said improvements consist of
 ue \$ 1440.00, a cross cut Value \$ 150.00, placer
 Value \$ 275.00 and a wing dam Value \$ 200.00, that the
 said improvements is correctly shown upon this plat,
 portion of said labor or improvements has been.
 the estimate of expenditures upon any other claim
 ter certify that this is a correct plat of said Mining
 e in conformity with said original field notes of the
 re of and the same is hereby approved.

r General's Office } W^m L. Distin
 Alaska }
 1904 } U. S. Surveyor General for
 Alaska.



Claim located : January 3rd 1899
 Recorded : January 17th 1899
 Mineral Survey No. 608
 Application for Survey : October 21st 1903
 Juneau Land District

PLAT
 of the claim of
 Jafet Lindeberg
 known as the
 McKay Bench or Moonlight Creek Bench No. 1
 Placer Claim
 in Cape Nome Mining District
 District of Alaska
 Containing an Area of 15.668 Acres
 Scale of 200 feet to the inch
 Variation 19° 32' E.
 Surveyed August 18, 1904 by
 Edw. Franklin Lewis
 U.S. Deputy Mineral Surveyor.

The original Field Notes of the Survey of the Mining Claim of
 Jafet Lindeberg

Known as the :

McKay Bench or Moonlight Creek Bench No. 1 Placer Claim
 from which this plat has been made under my direction
 have been examined and approved and are on file in this office.
 and I hereby certify that they furnish such an accurate description
 of said mining claim as will, if incorporated into patent, serve
 fully to identify the premises, and that such reference is made
 therein to natural objects or permanent monuments as will
 perpetuate and fix the Locus thereof.
 I further certify that Five Hundred Dollars worth of labor has
 been expended or improvements made upon said Mining Claim by
 claimant or his grantors and that said improvements consist of
 9 shafts value \$1440.00, a cross cut value \$150.00, placer
 workings value \$275.00 and a windmill value \$200.00, that the
 location of said improvements is correctly shown upon this plat,
 and that no portion of said labor or improvements has been
 included in the estimate of expenditures upon any other claim
 And I further certify that this is a correct plat of said Mining
 claim made in conformity with said original field notes of the
 survey thereof and the same is hereby approved.

U.S. Surveyor General's Office } W^m L. Distin
 Sitka, Alaska
 October 1, 1904 } U.S. Surveyor General for
 Alaska.

(Testimony of Daniel A. Jones.)

Mr. GILMORE Resumes Examination of Mr. Jones.

Q. Now, Mr. Jones, refer to the map which I have just placed on the wall, to which I direct your attention. State if you know, who made that map.

A. I did. (Continuing:) I made it in the month of November, 1911. The Bench claim No. 1, the Grant Claim, No. 2 East Fork, What's Left Fraction and the line of the Moonlight or Lyng claim, are all made from actual surveys by me, and those claims are correctly depicted on that map, with reference to each other. The other claims that are named on the map were made by me from a map sworn to by Arthur Gibson, those claims were drawn from Defendants' Exhibit 7; there is one other claim drawn in there with red ink called No. 1 Moonlight or Jensen's claim. The name is written in in blue; that was put in at Mr. Gilmore's request.

Q. With the exception of that one drawn on there, Bench No. 1 Moonlight, is there any other claim on there that was not surveyed by you, or taken from Gibson's map, Exhibit 7? A. No, sir.

Q. And do the various claims that are drawn on there aside from that particular one which I have referred to, represent the claims on the ground on this particular exhibit? A. Yes, sir.

Mr. GILMORE.—We offer the map in evidence.

Mr. COCHRAN.—We object to it on the ground that it is wholly immaterial and not sufficiently proven.

The COURT.—The objection to the offer of map in evidence is sustained, to which ruling of the

(Testimony of Daniel A. Jones.)

Court the defendants then and there excepted and the exception was allowed. [199]

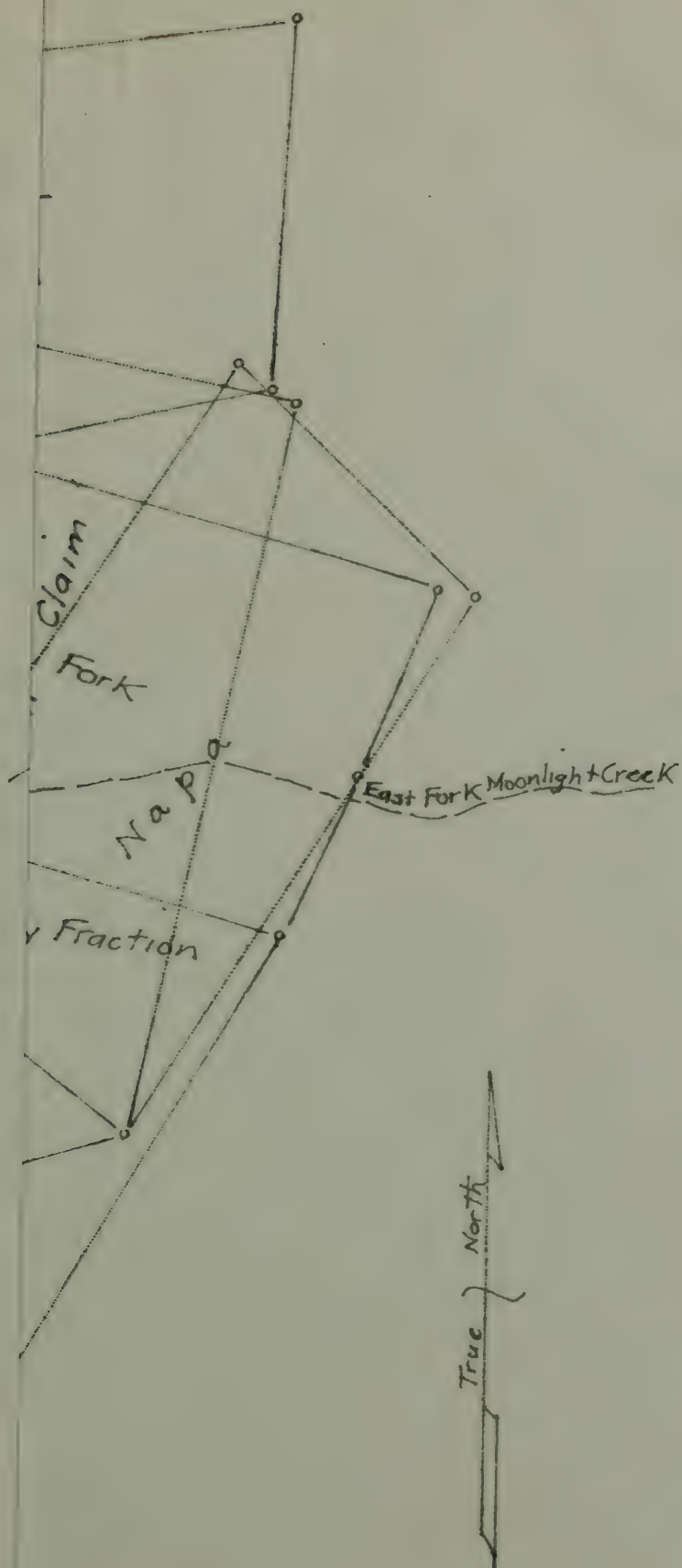
Mr. GILMORE.—I now offer the map in evidence for illustration.

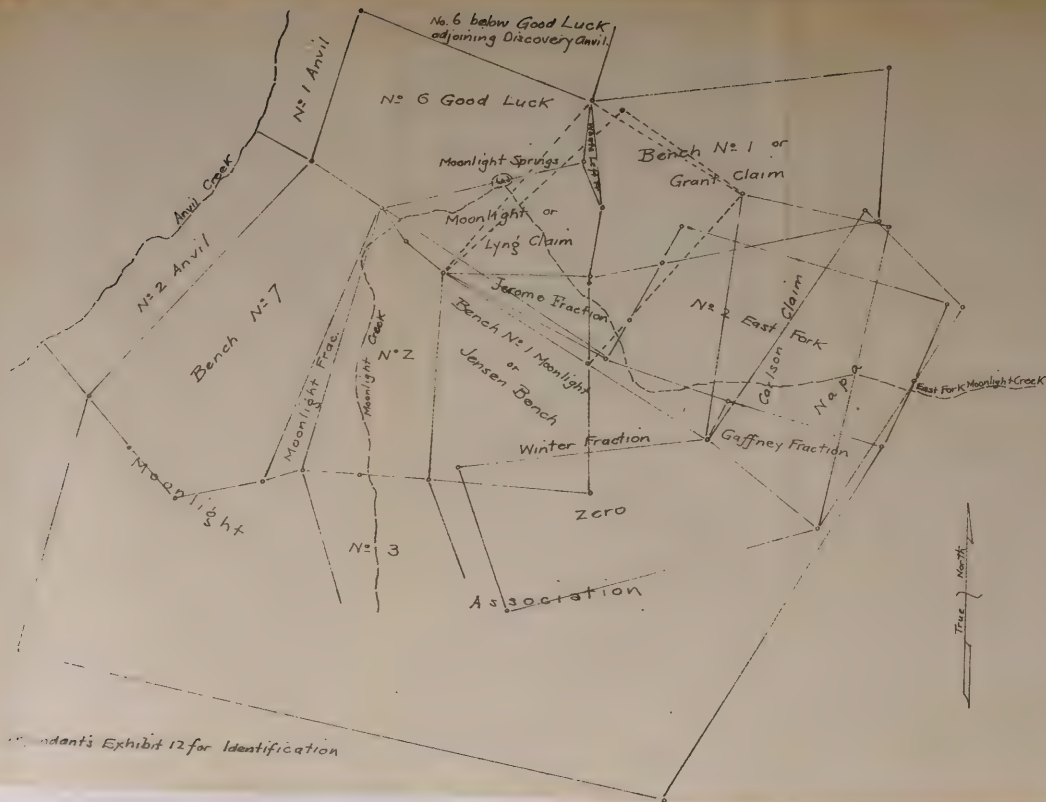
Mr. COCHRAN.—We object to it being offered in evidence for any purpose whatever.

The COURT.—Objection sustained, to which ruling of the Court the defendants then and there excepted and the exception was allowed.

Mr. GILMORE.—I would like to have the clerk mark it for identification.

The COURT.—It may be marked Defendants' Exhibit No. 12 for Identification. Said map being as follows: [200]





Plaintiff's Exhibit 12 for Identification

(Testimony of Daniel A. Jones.)

Q. Now, Mr. Jones, do you know a claim known as No. 5 below Good Luck?

A. Yes, sir. (Continuing:) I first knew the claim in 1908; it was pointed out to me by Charlie Johnson; it lies north of No. 6 Good Luck and east of Discovery Claim Anvil, it lies between the Grant claim and Discovery Anvil, and joins both of these claims.

Cross-examination.

(By Mr. SCHOFIELD.)

I never surveyed No. 5 Good Luck; I don't know that the Smith Fraction lies between No. 5 and No. 6 Good Luck. The only stakes I examined in that vicinity at that time were those that were pointed out to me by Charlie Johnson. He was superintendent of the Pioneer Mining Company at that time. I observed quite a lot of workings easterly of the cabin on the Grant claim, southerly of the cabin and east of the railroad track. I could not state positively whether there were a number of shafts on the portion of the Grant claim, on the conflict area with the Carlson claim.

Q. Examine the blue-print I hand you and state whether or not that is the survey you referred to when you say you surveyed No. 2 East Fork Moonlight.

A. Yes, that is the one. (Continuing:) It is a correct plat of the survey made at that time by Mr. Sommers and myself, from the stakes upon the ground.

(Testimony of Daniel A. Jones.)

Mr. SCHOFIELD.—We offer it in evidence on cross-examination of this witness.

The COURT.—It may be received in evidence and marked Plaintiff's Exhibit "M." Said exhibit being as follows: [202]

MAP
showing
CARLSON CLAIM and No 2 EAST FORK MOONLIGHT
Nome, Alaska.

Surveyed: Sept 15, Oct. 15, and Oct. 27th 1909.

by Dan'l A. Jones & R.J. Sommers
Civil Engineers
Nome, Alaska.



(Testimony of Daniel A. Jones.)

(Witness continuing:) At the time I surveyed the Moonlight or Lyng claim, there was no dam at the point shown on Plaintiff's Exhibit "A," but by my testimony I did not mean to say that there never was a dam there at that point in the old days. At the time I surveyed the Moonlight the specific purpose I was sent out there for was to get the east line of Good Luck and Moonlight claims, and showing that dam with reference to those claims and the fence embracing the springs.

Q. Now, with reference to the stake that you found at point Q, you testified that you found one stake at that point on Plaintiff's Exhibit "A" marked M. B.?

A. Yes, sir. (Continuing:) That was the only stake in that immediate vicinity. It stands right up on top of the ditch bank and also the stake at point J, as a matter of fact, that stands up on top of the ditch on the lower side. There are two stakes at that point, one stake marking the northwest corner of the Napa or Depue claim and the northeast corner of the Carlson claim.

Q. Now, you say that there was a red cabin, Dan, that was situated here as delineated on Defendants' Exhibit 11?

A. Yes, sir. (Continuing:) I did not observe whether or not the cabin was on skids, never paid any particular attention to it at all, only surveyed over to it and to put it on the map.

Q. At the time you were out there didn't you testify that there were persons in possession of the

(Testimony of Daniel A. Jones.)

cabin? A. Yes, sir.

Q. And that there was work going on upon the ground? A. Yes, sir.

Q. What kind of work? A. Sinking a shaft.

Q. Where was that shaft being sunk at that time?
[204]

A. Between the railroad track north of the line drawn west from the cabin to the railroad track.

Q. About halfway between the cabin and the railroad track?

A. Yes, I presume so, nearer the railroad.

Q. Who was working there then?

A. I don't know who the party was, he was then down I should judge ten feet.

Q. Who called your attention to the fact that they were working there at that time, Mr. McCumber?

A. Mr. McCumber wasn't there. I saw a fellow working and I went over and looked into the hole.

Q. Did you tie any of this work in in your survey of this ground?

A. No, sir. (Continuing:) I saw considerable old work in the southwest portion of the Grant claim.

Q. You don't know who did that work?

A. Well, when I was out there in the spring of 1904 they were working on that claim. (Continuing:) At the point 9 on my map there was a small hole dug in the ground; there was a stake stood six feet north of that point and the hole was a little to the northeast of that stake. It was not a fresh hole, I should judge it to be an old hole. The first time I noticed it particularly was this month. I

(Testimony of Daniel A. Jones.)

might have noticed it when I surveyed the Carlson Bench but I do not recall having done so at this time. The stakes found at point 9 were a trifle south of the middle of the Grant claim. At that point it is what I would call a prominent point, but the ground right around there in that immediate vicinity, is rather flat. In places below that point there is a bench or plateau where there is a drop-off averaging from six to eight feet, in some places ten feet. I know that there is a bench or plateau there [205] and willows below it, but I do not recall the general direction of it. The stakes at point 9 stand in open ground above the break-off; the stakes from that point can be seen from below the railroad track. It cannot be seen from any point south of the railroad track; I think it can be seen from all points north and east of the railroad track.

Redirect Examination.

(By Mr. GILMORE.)

Q. Now, Dan, I call your attention to the discrepancy in the two surveys of the Grant claim, Plaintiff's Exhibit "A" and Defendants' Exhibit

11. A. Yes, sir.

Q. Is there any way that a surveyor has of checking his survey after he gets through to see if it is correct or not?

A. Yes, sir, the method is called closing a survey.

Q. State whether or not the survey shown on the map of the Grant claim closes.

A. It does with more than fifty feet of the limitation. [206]

Mr. GILMORE.—I now offer in evidence the deposition of Mr. A. G. Kingsbury.

Deposition of A. G. Kingsbury.

My name is George Albert Kingsbury. I am 57 years old and my business is mining. I have been engaged in mining since 1898. I was born and reared in New England and first came to Alaska in 1898. I began mining in the Kobuk River country. I arrived in Nome from there about the 10th of July, 1899.

Q. Did you know a man by the name of Woodford N. Grant? A. Yes, sir.

Q. Do you know a man by the name of Andrew Jensen?

A. No, sir. (Continuing:) I knew the Grant placer claim also called and known as Bench No. 1 at the western base of Anvil Mountain. I first got acquainted with that claim in 1899. I had negotiations with the owner, Mr. Grant. I took an option about the last of July from Grant. It was an option to purchase and was in writing. I do not know where the writing is, I haven't it in my possession. I think it was destroyed the night the option terminated. The option was on fourteen claims belonging to W. N. Grant for a short term of days, until the expected arrival of a steamer, for the consideration of three hundred and fifty dollars. Mr. Grant was from New England, from the State of Maine.

Q. Do you know where Mr. Grant is to-day, or whether he is living or not? A. He is dead.

(Deposition of A. G. Kingsbury.)

Q. Do you know when he died, as near as you can tell?

A. Six or seven, possibly eight years ago. (Continuing:) I went upon the Grant claim at the time I took the option. I was accompanied by W. N. Grant. It was very close to the last of [207] July, 1899. It might have been the first or second day of August. Grant took me to the initial stakes and then to the corners.

Q. Have you been over the claim recently, during the past summer? A. Yes, sir.

Q. Do you know a claim known as the Moonlight or Lyng claim?

A. Yes, sir. (Continuing:) I have been familiar with the whereabouts of the Moonlight claim since I knew the Grant, about that time. I know where the initial mound or monument of the Bob Lyng claim is situated on the ground. The initial stake of the Grant claim as pointed out and indicated to me by Grant at that time in 1899, was at the same place or mound of the initial stake of the Lyng claim; they were both together. I know where the corner stakes of the Grant claim were marked on the ground at that time. The stakes and mounds of the Grant claim as marked on the ground to-day, are the same as they were in the last of July or first of August, 1899. At that time the corners were marked with small willows; there were two, three or four small shovels of earth turned up against each stake at each of the corners and the initial stake. The corners and initial stake of the Grant claim at

(Deposition of A. G. Kingsbury.)

that time were plainly visible.

Q. At the time you and Mr. Grant were there in July or August, 1899, did you observe any markings or monuments of any kind within the boundaries of the Grant claim as then marked on the ground indicating any other locations? A. No, sir.

Q. From your observations at that time if there had been any mounds or monuments within the borders or boundaries of the Grant claim, would you have seen them? [208]

A. I think so. (Continuing:) I am not positive when I was next on the Grant claim, but it was two or three days after. I went out to see some of the other claims on Twin Mountain and American River and we came back down American Creek and crossed the Grant claim. Mr. Grant was with me and we came onto the Grant claim and he wanted to show me that he could find gold there, that he could find gold. That was during the time that I had my first option on the claims. He took me down to a place on the side next to Little Creek, I should say it was halfway between the present location of the railroad and the southwest corner.

Q. And state whether or not at that time he indicated to you where he had been working prior to that time. A. He did.

Q. And what was the character of the work?

A. Well, when we got there he said somebody had been "sniping" in the same place where he first worked. We went there and found good colors of gold.

(Deposition of A. G. Kingsbury.)

Q. State whether or not the prospects you found there at that time justified you in doing anything further with that claim.

A. Yes, sir. (Continuing:) The gold that we discovered at that time was within the boundaries of the claim as it is now marked on the ground. After my first option ran out I secured another.

Q. Why did the first option run out?

A. I failed to receive the cash I expected from the States in time.

Q. When did you take that second option that you speak of?

A. Later in August, 1899. (Continuing:) The second option was [209] in writing also; it is with the Pacific Coal & Transportation's papers. I have not a copy of it. Briefly the substance of the option was one thousand dollars for an undivided one-half or 51 per cent on fourteen claims, including what we called then the Moonlight or Grant claim. They were the same claims the prior option was on. I went outside in the winter of 1899 and 1900, and so did Mr. Grant.

Q. Mr. Kingsbury, what company, if any, did you organize or assist in organizing during the winter of 1899 and spring of 1900?

A. The Corwin Trading Company.

Q. And state whether or not they did business in Neme in 1900.

A. They did. (Continuing:) I was their agent and was in full charge of their affairs as agent.

Q. Do you know whether or not, of your own

(Deposition of A. G. Kingsbury.)

knowledge, that second option was taken up?

A. It was.

Q. And whether or not deeds passed between Mr. Grant and yourself and the Corwin Company?

A. They did.

Q. Now, do you know whether or not that deed was recorded in the spring of 1900 when you returned? A. I am very sure it was.

Mr. GILMORE.—I offer a certified copy of the location notice of the Grant claim, known as Bench No. 1 Moonlight, by W. N. Grant.

Mr. SCHOFIELD.—We object to it as being wholly incompetent, irrelevant and immaterial.

The COURT.—Objection overruled. It may be received and marked Defendants' Exhibit 13, said exhibit being as follows: [210]

[Defendants' Exhibit No. 13.]

LOCATION NOTICE.

Claim No. 1 Bench, Cape Nome Mining District.

I, the undersigned do this 9th day of January, 1899, locate and claim 20 acres of placer mining ground on this mountain known as Anvil, described as follows: Commencing at the eastern end of Robert Lyng's Moonlight Claim and extends in an easterly direction 1320 ft. & 330 on each side of the center stake. This claim is located on the Western base of Anvil Mt.

W. N. GRANT,
Locator.

Witness:

A. JENSEN.

(Deposition of A. G. Kingsbury.)

Filed for record 10:10 P. M. January 17, 1899.

G. W. PRICE,
Deputy Recorder.

Recorded in Vol. 3, page 59 of the records of the Cape Nome Mining District.

Mr. GILMORE.—I now offer in evidence deed from Woodford N. Grant to the Corwin Trading Company, of an undivided one-half interest in Bench No. 1 or Grant claim together with the endorsement on the back of said deed of the recorder showing deed of record in the Cape Nome Mining District, District of Alaska.

The COURT.—It may be received in evidence and marked Defendants' Exhibit 14.

(Recital:) Said instrument being a deed dated March 31, A. D. 1900 between W. N. Grant of Lynn, Mass., and the Corwin Trading Co., conveying an equal one-half part of Bench claim No. 1 or Grant claim, and other claims, and bearing the endorsement of the recorder of the Cape Nome Mining District, District of Alaska showing the deed was recorded June 6, 1900 in the Cape Nome Recording office.
[211]

Mr. GILMORE.—I now offer deed in evidence from the Corwin Trading Company to the Pacific Coal & Transportation Company of the same property covered in the former deed, said deed being acknowledged, witnessed and duly recorded, and I further offer the certificate of the recorder of said deed in the Cape Nome Mining and Recording District, District of Alaska.

(Deposition of A. G. Kingsbury.)

The COURT.—It may be received in evidence marked Defendants' Exhibit 15.

(Recital:) Said instrument being a deed from the Corwin Trading Co. to the Pacific Coal & Transportation Co. of an undivided one-half interest in the Grant Claim and other property, bearing date the 8th day of August, 1901, and recorded in Vol. 96, page 192, on the 16th day of October, 1901, in the office of the recorder of the Cape Nome Mining District, District of Alaska.

Q. Were you on the Grant claim in the spring or summer of 1900 when you returned to Nome?

A. Yes, sir. (Continuing:) I was on the Grant claim a great many times that summer. I inspected the boundaries of the Grant claim that summer. The corners and the initial stake were still standing and stood in the same places that they now stand in.

Q. And what work, if any, was done on the Grant claim by you for the Corwin Trading Company in the year 1900?

A. There was quite a little prospecting done, and work on the southern end.

Q. State at whose expense the work was done.
[212]

A. The Corwin Trading Company's. (Continuing:) I supervised the work myself, one of my men, named Cony Weston, took charge of the work. On the lower half of the claim he went down to water, I did not measure the shaft but I should say ten feet, and he then dug north about the same depth. When I speak of the lower half of the claim I mean the half

(Deposition of A. G. Kingsbury.)

upon which the initial stake was, towards the south-west corner of the claim.

Q. Now, Mr. Kingsbury, do you know the portion of the claim in controversy in this lawsuit?

A. Approximately, yes.

Q. And state where Cony Weston worked in 1900.

A. Part of his work was on that portion, the part in controversy. (Continuing:) I could not say how many times I was on the Grant claim in 1900; I had two sets of men working north of there on Twin Mountain and Butterfield Canyon and I frequently rode by there. My best judgment is that I was on the Grant claim a great many times. There was never any other person than me and my men in the physical possession of the Grant claim or the ground within the boundaries of the Grant claim, in 1900. There was not any markings or stakes or monuments within the exterior boundaries of the Grant claim in the year 1900, to my knowledge.

Q. In the year 1901 what other corporation, if any, was organized by you or your associates, with reference to taking over the properties of the Corwin Company?

A. The defendant the Pacific Coal & Transportation Company.

(Witness continuing:) I was manager or agent of the Pacific Coal & Transportation Company in Nome in 1901. The deed from the Corwin Trading Company to the Pacific Coal & Transportation Company was left to the secretary of the company to attend to.

(Deposition of A. G. Kingsbury.)

Q. State whether or not in the year 1901 you were upon the Grant claim.

A. Yes, sir. (Continuing:) I was on the Grant claim in 1901 a great many times. The Pacific Coal & Transportation Company was in the possession of the claim in that year. There was quite a little prospecting done by them at the expense of the Pacific Coal & Transportation Company. The prospecting was done under my direction. The work was done by A. D. Rogers and Mike Leary who were anticipating taking a lay. The work done was at the expense of The Pacific Coal & Transportation Company. They sunk a shaft further north of the other work done by Cony Weston. I inspected the shaft and I should think it was at least 14 feet deep. They also dug a trench into the hill, running northwest and southeast. In 1901 I was mining on the same claims on Twin Mountain and Butterfield Canyon and in riding my horse to and from I always crossed the Grant claim. I observed the original Grant stakes that were pointed out to me by Grant; they were standing marking the corners and the initial stake in 1901, at the same place they were when Grant pointed them out to me in 1899, and in the same places that the Grant stakes stand to-day.

Q. What did you do or cause to be done in 1901 to more particularly mark the Grant claim?

A. I made larger mounds.

Q. Where? A. Around each of the five stakes.

Q. And what were the character of the mounds that you erected in 1901?

(Deposition of A. G. Kingsbury.)

A. They were sod; one, the initial, I put a good-sized mound.

(Witness continuing:) I put some flat rocks that they had uncovered, [214] taking them out of the trench near the railroad. The mounds I placed around the corners were the same as around the initial, made of sod but not so large as the one I put at the initial stake, but I put no stone around the corners.

Q. And state whether or not at the time you built those mounds the five original Grant stakes that Grant pointed out to you in July or August, 1899, were still standing.

A. Yes, they were all standing.

Q. And where was the shaft that you dug in 1901 with reference to where the railroad now is, was it above or below?

A. Below, that was southwest of the trench.

Q. Then state whether or not the shaft dug in 1901 was within the ground in controversy.

A. It must have been.

Q. Now, Mr. Kingsbury, state whether or not in the year 1901, you did any other act or thing to more particularly define the Grant claim, besides building these mounds you have told of.

A. Yes, sir, I made an amended notice of location.

Q. I hand you here an exhibit, please examine it briefly and state whether or not you know what it is.

A. It is my amended location notice of the Grant claim.

Q. And state whether or not you filed a copy of the amended location for the Pacific Coal & Transporta-

(Deposition of A. G. Kingsbury.)

tion Company in the Cape Nome Recording office.

A. I did.

Mr. GILMORE.—I now offer in evidence, if the Court please, the exhibit identified by the witness, being certified copy of the amended notice of the Grant claim. [215]

Mr. SCHOFIELD.—Objected to as incompetent, irrelevant and immaterial.

The COURT.—Objection overruled. It may be received in evidence, marked Defendants' Exhibit 16. Said exhibit being as follows:

[Defendants' Exhibit No. 16.]

“ #12413.

AMENDED LOCATION CERTIFICATE.

KNOW ALL MEN BY THESE PRESENTS, That I the undersigned have this 4th day of October, 1901, amended, located and claimed and by these presents do amend, locate and claim, by right of the original discovery, this 20 acre placer claim, located by W. N. Grant, on the 9th day of Jan. 1899. This further additional and Amended certificate of location is made without waiver of any previously acquired rights, but for the purpose of correcting any errors in the original location, description or record and of taking in and acquiring all forfeited or overlapping ground, and of taking in any part of any overlapping claim, which has been abandoned and of securing all the benefits of the law applicable to amended location certificates.

This claim is described as follows, to wit:

Beginning at this initial monument stake, standing

(Deposition of A. G. Kingsbury.)

beside the Northeast end center initial stake of the Robt. Lyng Moonlight claim and extending thence in a southerly direction 330 feet to stake #2, thence in an Easterly direction 1320 feet to stake #3, thence in a northerly direction 660 feet to stake #4, thence in a westerly direction 1320 feet to stake #5, thence in a southerly direction 330 feet to point of beginning. The western end line of this claim and the Eastern end line of the Robert Lyng Moonlight claim is identical and the same. [216]

On said Robert Lyng claim is located the spring and water supplying Nome City, also dam and building of same. The claim of which this is an amended notice, is the first bench on Moonlight Creek and extends toward and on to southwestern base of Anvil Mountain.

The annual assessment work required by law has been done on this claim during seasons of 1900 and 1901.

PACIFIC COAL & TRANSPORTATION CO.

By A. G. KINGSBURY.

Witness:

E. L. HOWARD.

Filed for record—10:24—A. M. Oct' 7th, 1901.

T. M. REED,

Recorder.

E. Whittard,

Deputy.

Recorded in Vol. 95, page 225."

(Witness continuing:) I wintered in Nome in the winter of 1900; I was out over the Grant claim sev-

(Deposition of A. G. Kingsbury.)

eral times during the winter.

Q. And during the year 1901 that you have just detailed, the year that you built the mounds and amended the location, state whether or not any person was in the physical possession, or claimed the physical possession of any of the Grant claim, as marked on the ground.

Mr. COCHRAN.—Objected to as calling for a conclusion of law.

The COURT.—Objection sustained, to which ruling of the Court the defendants then and there excepted and the exception was allowed.

Q. Were there any stakes, mounds or monuments of any character whatever, within the exterior boundaries of the Grant claim indicating that anybody claimed it?

Mr. COCHRAN.—Objected to that as wholly leading.

The COURT.—Objection sustained, to which ruling [217] of the Court the defendants then and there excepted and the exception was allowed.

(Witness continuing:) I was out in the States during the winter of 1901 and spring of 1902 and I returned to Nome in 1902. The Corwin Company operated the steamer "Corwin," that is where it got its name. I was on the Grant claim in the summer of 1902 a great many times. I was still the agent and manager of the Pacific Coal & Transportation Company and in charge of its affairs at Nome. In the summer of 1902 there was work done upon the Grant claim at my request. It consisted of digging around the lower part of the claim. Some of it was

(Deposition of A. G. Kingsbury.)

inside of the limits of the ground in controversy and some of it was just north. In 1902 I again observed the mounds and stakes of the Grant claim. They were in the same place that they always stood. In 1902 I got some 2x4's made at the Corwin buildings and painted the numbers of the stakes, five of them, and placed them in the five mounds that I had previously made. At the initial mound I put stake No. 1. It was a 2x4 sticking above the ground $2\frac{1}{2}$ or 3 feet perhaps, and numbered the figure 1 with carriage paint. At the southwest corner, the corner towards Little Creek roadhouse, I marked figure 2 on a stake with carriage paint; at the southeast corner, in the direction of the Bessy mine, I marked with the figure 3 in carriage paint at the northeast corner, toward Anvil mountain, I marked the figure 4 in carriage paint on a stake; at the northwest corner towards Discovery claim on Anvil, I marked the stake with the figure 5. My impression is that it was soon after the snow left in 1902 that I marked the stakes. I am not positive about that. I numbered them at the Corwin buildings. My recollection is that it was in 1902. I had seen some jumper stakes that I had [218] taken out and thrown away during the summer of 1902. They were stakes put there by jumpers in 1902, I saw them putting them there. I conversed with them. The Eagle Fraction is an irregularly staked claim. I don't know what claim the jumper was trying to stake, but it was not No. 1 Bench Moonlight. It is not a claim that is staked anywhere in that country now. Cony Weston called my attention to a stake placed up where the road is now at the base

(Deposition of A. G. Kingsbury.)

of Anvil mountain, the old road, it was placed there that same day; that was in 1900.

Q. And was there ever any stake at that point where that stake was set prior to that time?

A. No, sir, nor since. (Continuing:) That was a very prominent place and I would have seen it if there had been one.

Q. Were you on the claim this summer when any photographs were taken? A. Yes, sir.

Q. Please examine the photo that I hand you and state if you know what it is a picture of.

A. That is the mound in which the initial stake of the Grant was placed.

Q. And were you present when that photograph was taken? A. Yes, sir.

Q. And which stake in the picture is the Grant claim stake?

A. The 2x4 at Mr. McCumber's right elbow.

Q. Is that stake marked?

A. I cannot see but I know it is marked.

Q. What is it marked? A. No. 1.

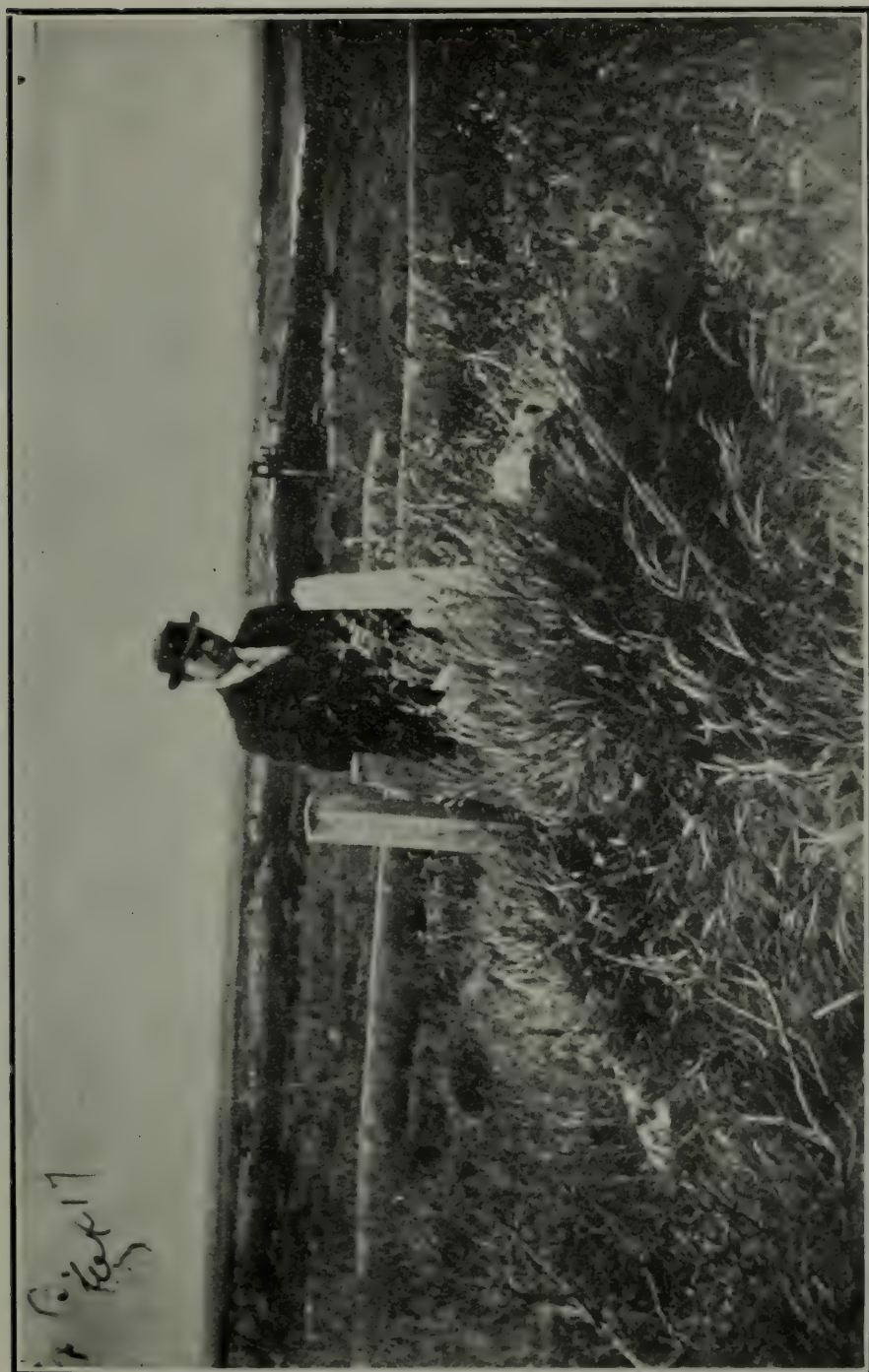
Q. State whether or not that is the stake that you placed there in the year 1902. A. Yes, sir. [219]

Q. Where was the original initial stake pointed out to you by Grant in 1899 with reference to that stake? A. At the side of it.

Mr. GILMORE.—I now offer in evidence the photograph taken in 1911, showing the initial mound of the Grant claim, built by the witness in 1901.

The COURT.—It may be admitted in evidence marked Defendants' Exhibit 17, said photograph being as follows: [220]

[Defendants' Exhibit No. 17.]



(Deposition of A. G. Kingsbury.)

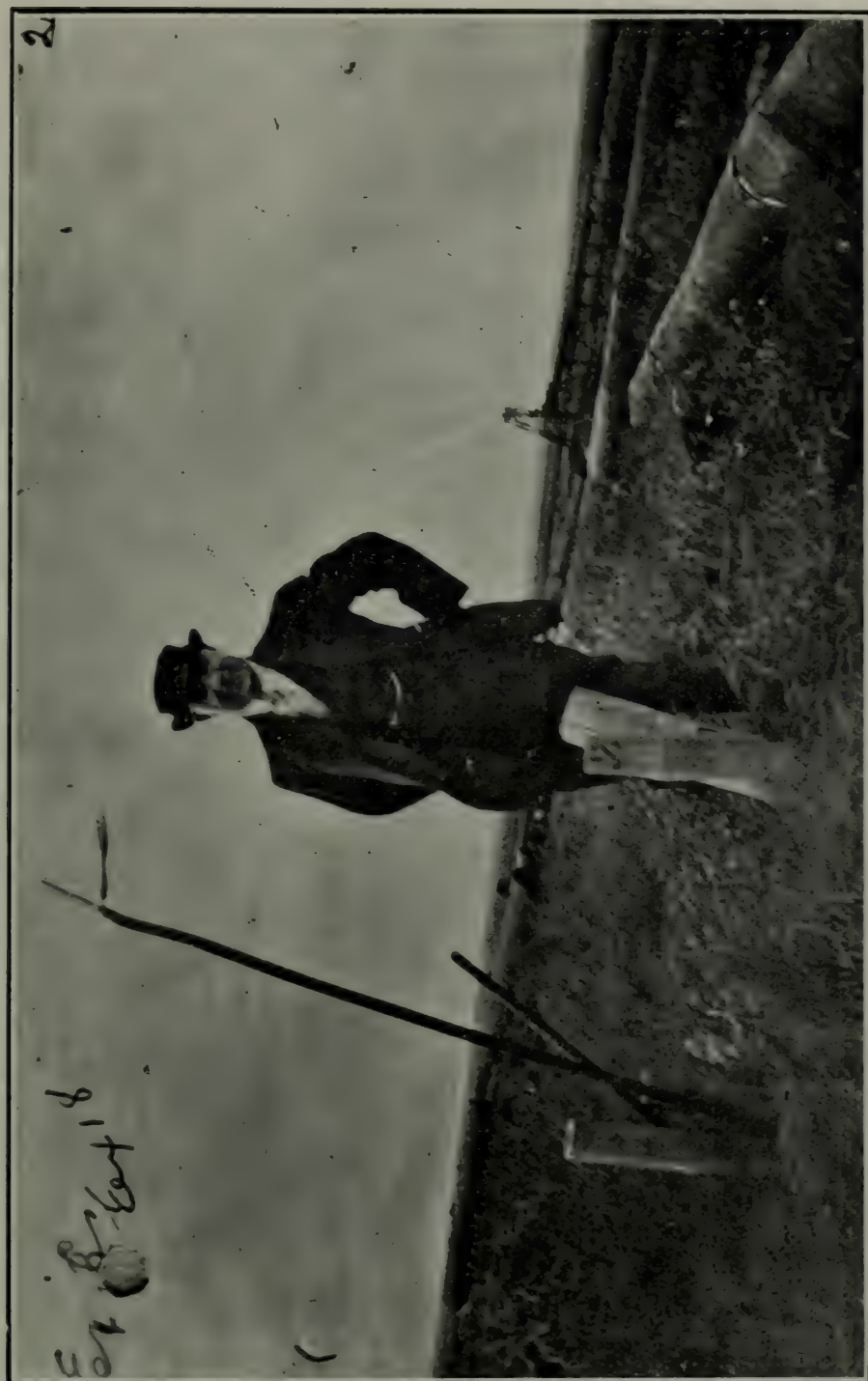
Q. Examine the photograph I hand you marked in the corner 2, and state, if you know what that is.

A. That is the southwest corner of the Grant claim. (Continuing:) That is the corner towards Little Creek roadhouse. I was present when the photograph was taken. The photograph represents the southwest corner stake the 2x4 marked in paint figure 2. That is a picture of the mound that I built in 1901 and the stake that I placed at that corner; that was where the original southwest corner of the Grant claim as identified to me by Grant in 1899.

Mr. GILMORE.—I now offer the photograph in evidence, if the Court please.

The COURT.—Photograph admitted in evidence marked Defendants' Exhibit 18. Said photograph being as follows: [222]

[Defendants' Exhibit No. 18.]



(Deposition of A. G. Kingsbury.)

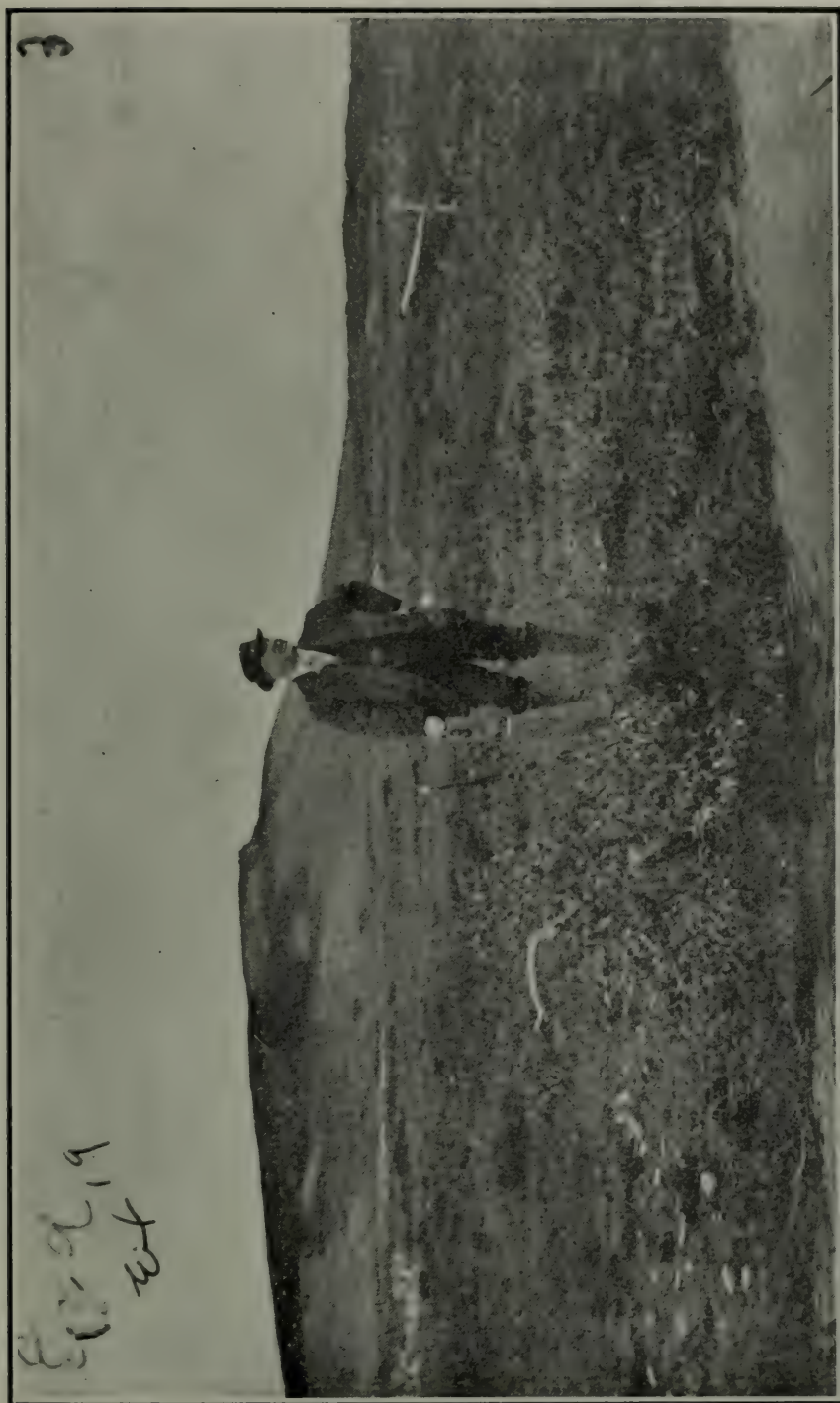
Q. Now, please examine the photograph marked 3 in the corner, and state, if you know, what it is.

A. That is the southwest corner of the Grant claim. (Continuing:) It is the corner in the direction of the Bessie mine. The photograph represents the southeast corner of the Grant claim, showing the stake 2x4 marked with the figure 3 in carriage paint. It shows the mound I built in 1901 and the stake that I put there afterwards. That is where the original willow stake that marked the southeast corner indicated by Mr. Grant to me stood in 1899.

Mr. GILMORE.—I now offer the photograph in evidence, if the Court please.

The COURT.—It may be admitted in evidence marked Defendants' Exhibit 19. Said exhibit being as follows: [224]

[Defendants' Exhibit No. 19.]



(Deposition of A. G. Kingsbury.)

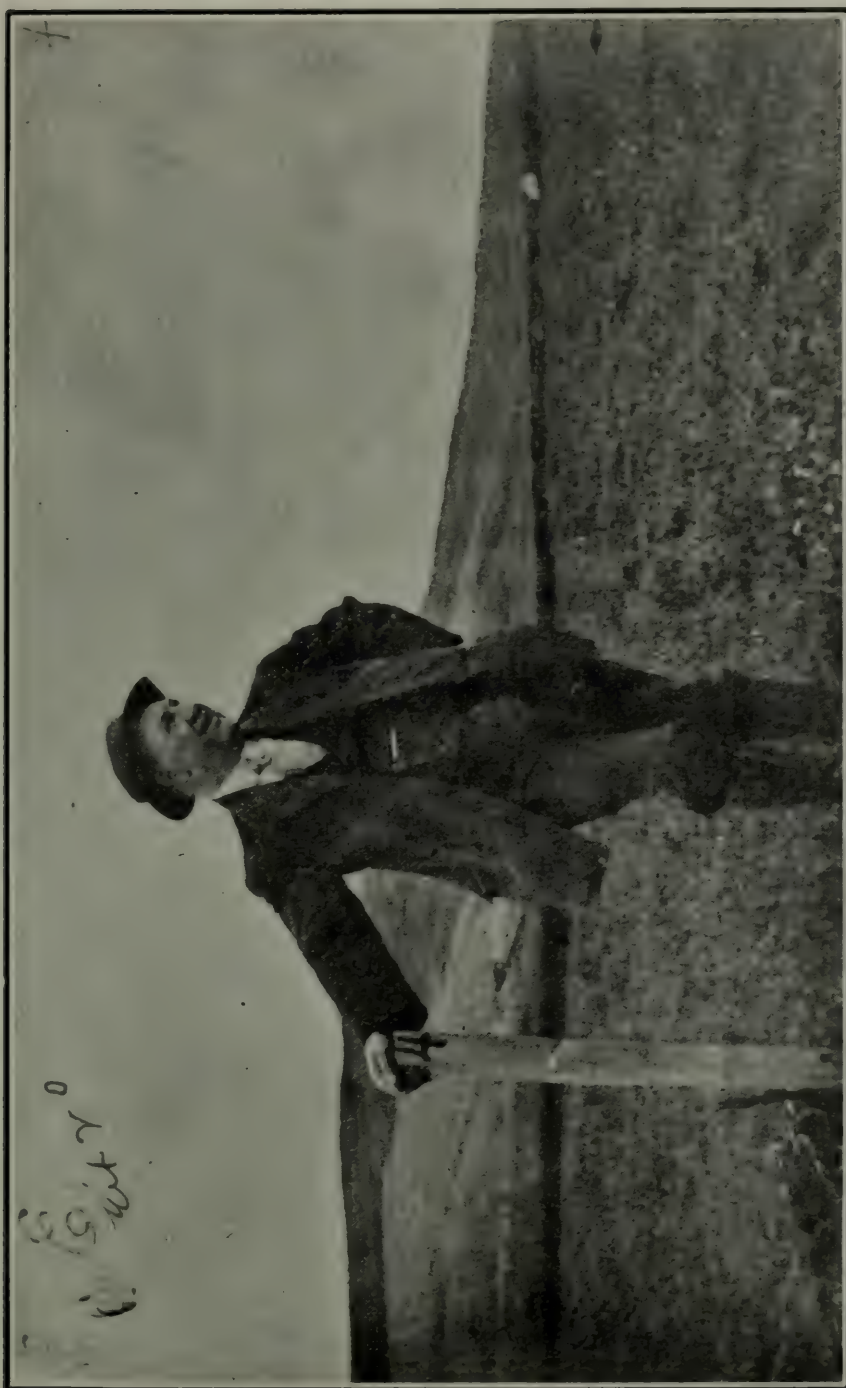
Q. Examine the photograph I hand you marked 4 in the corner, and state, if you know, what that is.

A. That is the northeast corner of the Grant claim. (Continuing:) The corner toward Anvil mountain. The Grant stake is the one upon which Mr. McCumber has his arm in the photograph, and is marked figure 4. The photograph shows the mound that I built in 1901 and the Grant stake that I placed there afterwards. At the time Mr. McCumber and I took that picture, this summer, 1911, the original Grant stake, the very small willow, was standing and it is shown in the photograph alongside of the 2x4.

Mr. GILMORE.—I now offer the photograph in evidence.

The COURT.—It may be received and marked Defendants' Exhibit 20. Said photograph being as follows: [226]

[Defendants' Exhibit No. 20.]



(Deposition of A. G. Kingsbury.)

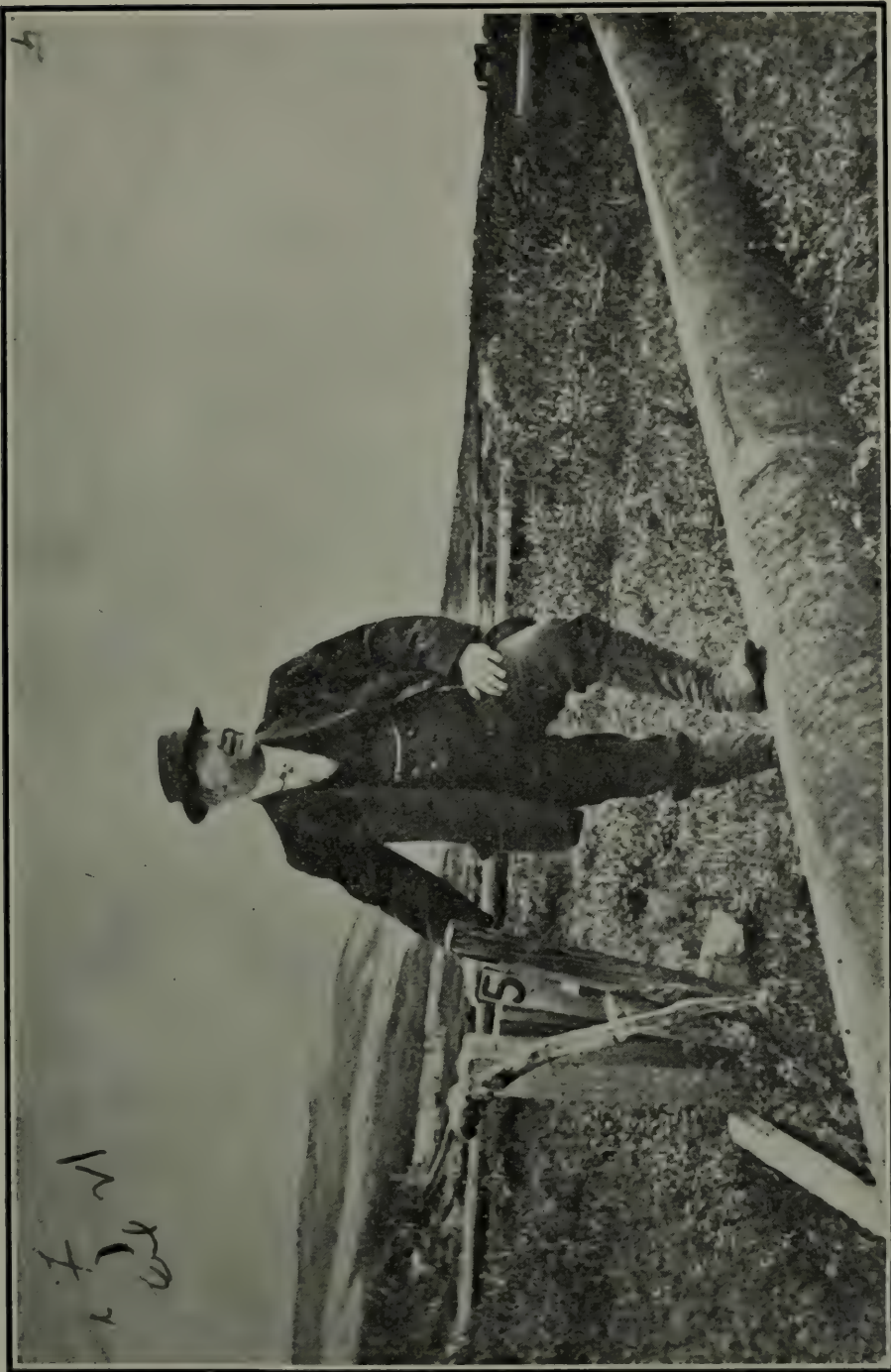
Q. Please examine the photograph I hand you marked 5 in the corner, and state what it is a photograph of.

A. That is a picture of the northwest corner of the Grant claim, the corner towards Discovery on Anvil. (Continuing:) The 2x4 bearing the figure 5 is the Grant stake. It was placed there by me. It stands in the same place that the corner was indicated to me in 1899 by Grant.

Mr. GILMORE.—I offer the photograph in evidence.

The COURT.—It may be received in evidence marked Defendants' Exhibit 21. Said exhibit being as follows: [228]

[Defendants' Exhibit No. 21.]



(Deposition of A. G. Kingsbury.)

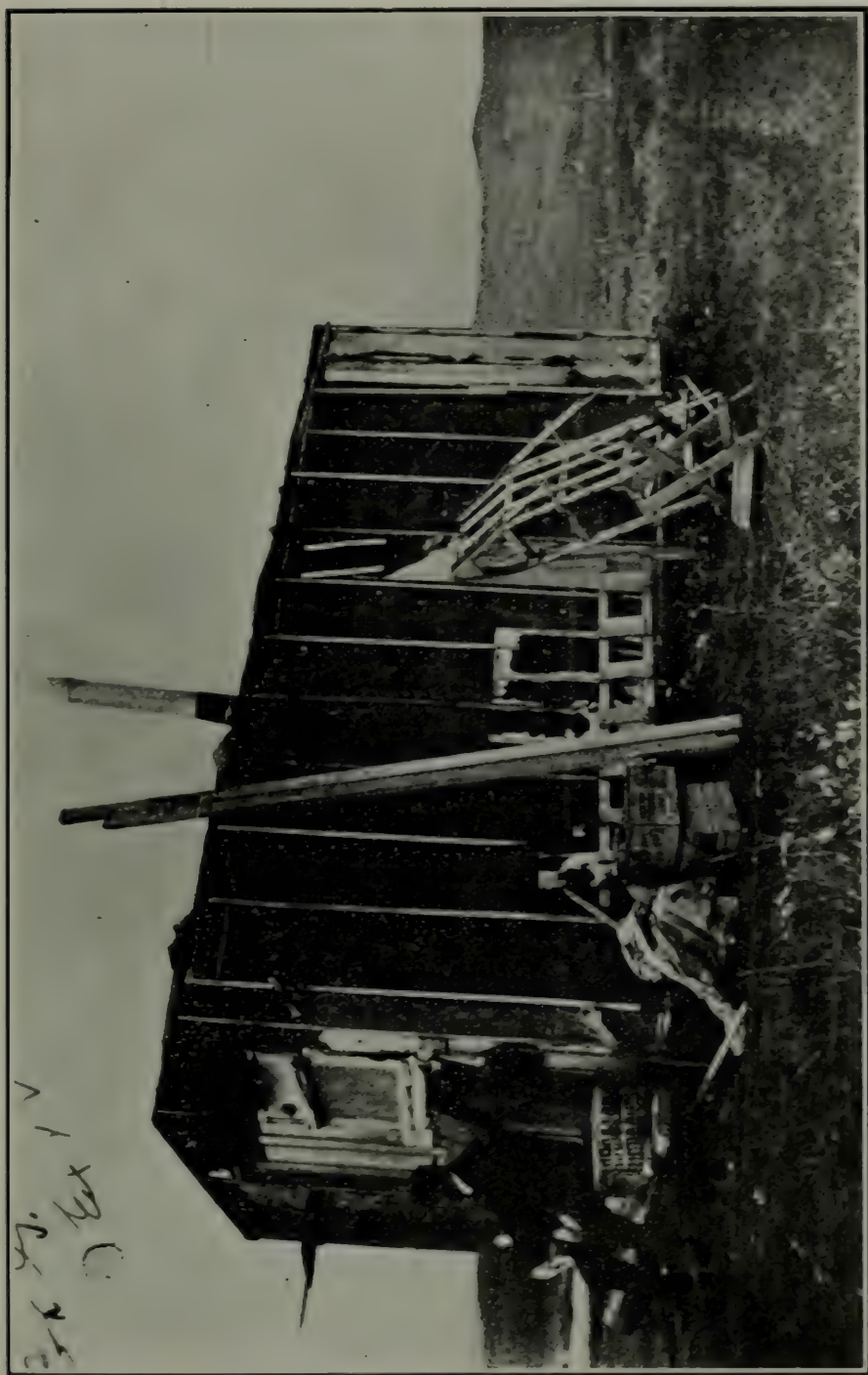
Q. I hand you another photograph. Please state, if you know, what that is a picture of.

A. A cabin that is on the Grant claim. (Continuing:) It is on the south part above the railroad and is the cabin referred to near the railroad track. This photograph was taken at the time I was out there with Mr. McCumber this summer.

Mr. GILMORE.—I offer the photograph in evidence, if the Court please.

The COURT.—It may be received in evidence and marked Defendants' Exhibit 22. Said exhibit being as follows: [230]

[Defendants' Exhibit No. 22.]



(Deposition of A. G. Kingsbury.)

Q. Please examine this photograph and state, if you know, what it is.

A. It shows the shaft on the Grant claim. (Continuing:) The shaft near the southwest corner and within the ground in controversy. The photograph was taken when Mr. McCumber and I was out at the shaft recently.

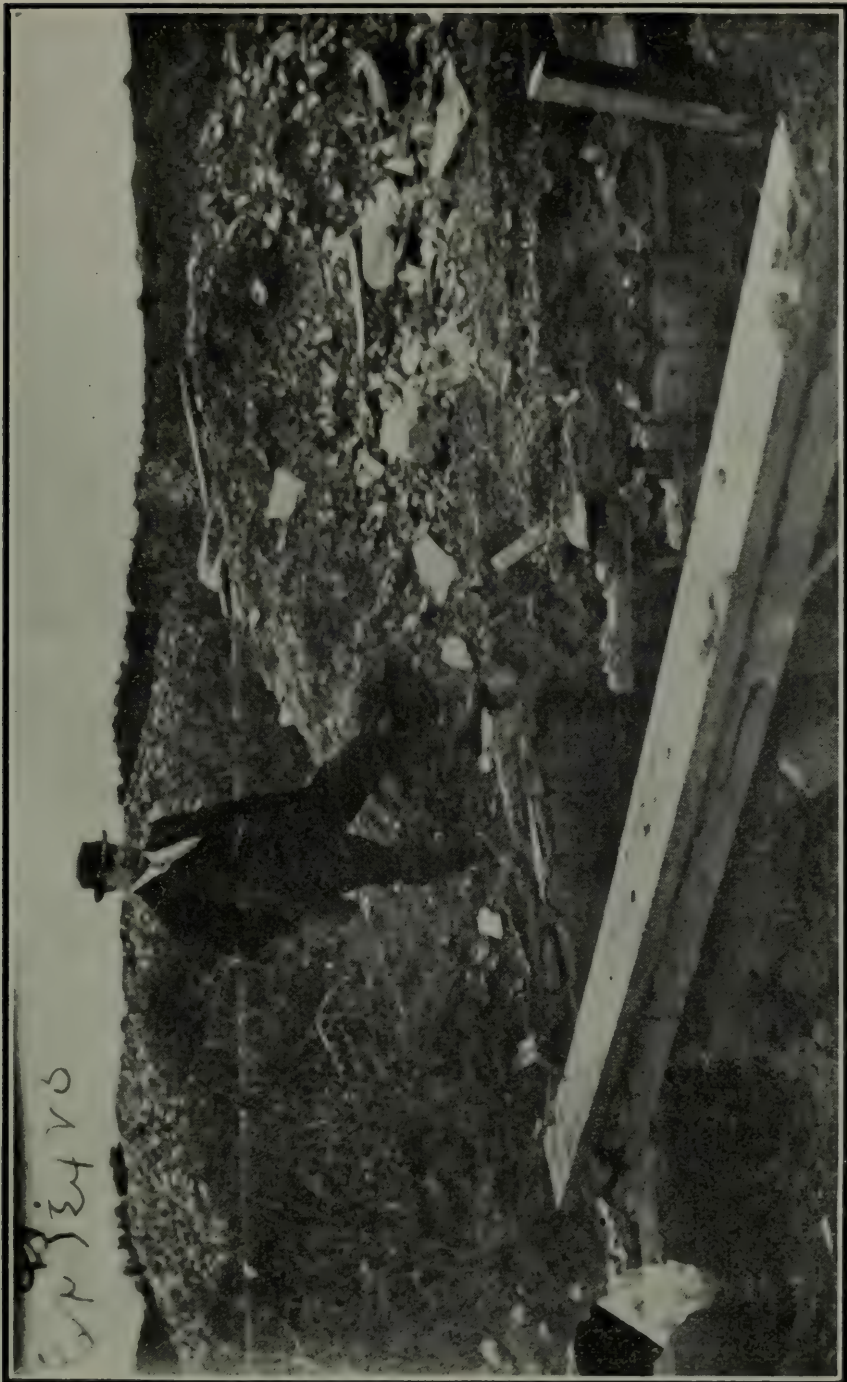
Q. Did you notice a pile of tailings just behind Mr. McCumber and can you state of your own knowledge what they represent in the photograph?

A. That represents the Bard and Muther tailings. (Continuing:) It is the tailings from the work of 1904 and 5, as I remember it, and was within the ground in controversy.

Mr. GILMORE.—I offer the photograph in evidence.

The COURT.—It may be received in evidence and marked Defendants' Exhibit 23. Said exhibit being as follows: [232]

[Defendants' Exhibit No. 23.]



(Deposition of A. G. Kingsbury.)

Q. Examine this photograph and state, if you know, what that is a photograph of.

A. It shows tailings on the south half of the claim. (Continuing:) It is a photograph of the portion of the Grant claim the southern third. It is the part known as the west end towards the Lyng or Moonlight claim.

Q. And state whether or not that is a picture of a portion of the ground in controversy. A. It is.

Q. What, if you know, of your own knowledge, are the piles of rock or tailings?

A. These are tailings of Bard and Muther and in part the Russians.

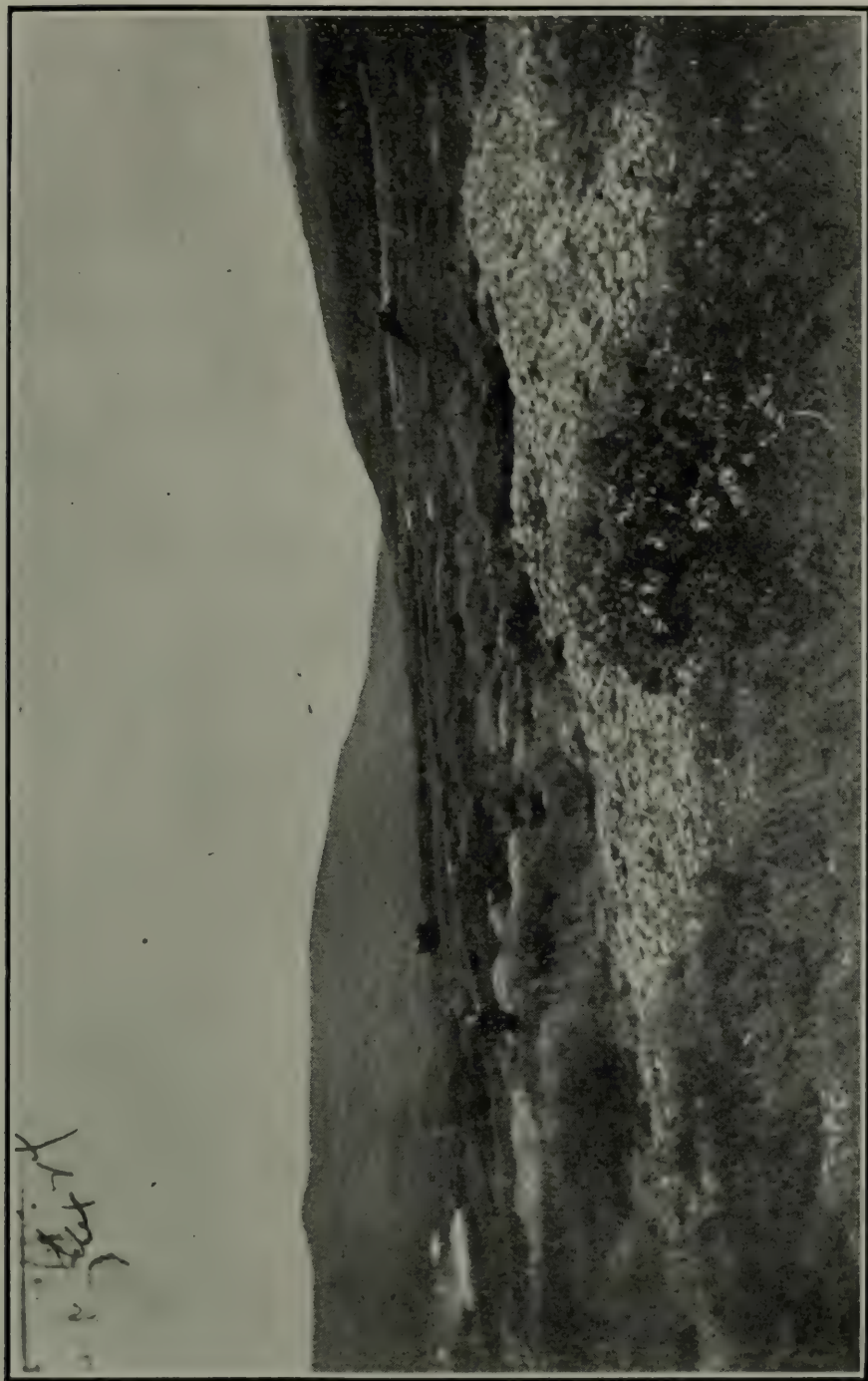
Q. And state whether or not those are tailings of work done by laymen under the Grant title, if you know of your own knowledge.

A. Yes, sir. (Continuing:) That picture was taken at the time Mr. McCumber and I took the others; all the photographs were taken the same day.

Mr. GILMORE.—I now offer this photograph in evidence.

The COURT.—It may be received and marked Defendants' Exhibit 24. Said exhibit being as follows: [234]

[Defendants' Exhibit No. 24.]



(Deposition of A. G. Kingsbury.)

Q. In 1902 state whether or not the defendant, Pacific Coal and Transportation Company gave any lease or leases on the Grant claim. A. It did.

Q. I hand you an exhibit, Mr. Kingsbury, please examine it and state if you know, what it is.

A. I do.

Q. What is it?

A. It is a lease I gave Pat Winter and George Crawford.

Q. You say you gave it, for whom?

A. For the Pacific Coal & Transportation Company.

Q. And upon what claim?

A. Upon the Grant claim.

Mr. GILMORE.—We now offer the written lease in evidence, being the exhibit identified by the witness, the original instrument, for the purpose of showing that the defendants were in possession of the ground in controversy.

The COURT.—It may be received in evidence and marked Defendants' Exhibit 25. Said exhibit being as follows:

[Defendants' Exhibit No. 25.]

“THIS INDENTURE made the 15th day of July, A. D. 1902, by and between A. G. KINGSBURY, Agent, Lessor and P. D. WINTER & GEORGE CRAWFORD, Lessees, WITNESSETH:

That the lessee for and in consideration of the rents, royalties, covenants and agreements hereinafter reserved and by said Lessees to be paid and performed, has granted, demised and let unto the

said Lessees on a seventy-five per cent lay or lease all of the placer mining grounds known as "Moonlight" lying on the southern base of Anvil mountain and staked by Woodford N. Grant, the same is situated in the Nome Mining District, District of Alaska and belongs to the Pacific Coal and Transportation Co., to have and to hold unto the said Lessees during the open mining season of 1902, or water runs freely in sluice boxes without freezing, At which time this contract will expire, unless sooner revoked, forfeited or determined through the violation of any covenant hereinafter against the said tenant.

And in consideration of said demise, the said Lessees [236] covenant and agree with said Lessor as follows, to wit: To enter upon said mine or premises and work the same in *best* manner necessary to good and economical placer mining and to work said ground as steadily and continuously as possible with as many men employed as can be worked to advantage and without waste or sacrifice of the present or future value of said mine and that any failure so to do may be considered a violation of this contract. All gold taken from said mine to be divided between Lessor and Lessees as follows, 25 per cent to Lessor and 75 per cent to Lessees, all cleanups or gold mined from said claim by Lessees to be divided upon demand of Lessor.

The Lessees hereby agree not to assign their lease of said claim or any portion of it or any interest thereunder and not to sublet the premises or any part thereof without the written consent of said

(Deposition of A. G. Kingsbury.)

Lessor and not to allow any person or persons except the said Lessees, their employees and co-laborers to take or hold possession of said premises or any part thereof under any pretense whatsoever. Upon the violation by said lessees or any person employed by or co-laboring with them of any of these covenants and agreements the terms of this lease shall, at the option of the Lessor, expire and said Lessor or his agent may enter upon said premises after making demand for same in writing, without process of law.

Each and every clause of this indenture shall extend to the heirs, executors and administrators of all parties hereto. In witness whereof the said parties, Lessor and Lessee, have hereunto set their hands and seals on day and date first written.

PACIFIC COAL & TRANSPORTATION
CO.,

A. G. KINGSBURY, Agent, [Seal]
Lessor.

P. D. WINTER, [Seal]
GEO. CRAWFORD, [Seal]
Lessees.

Witness _____,”

Q. State whether or not the lessees under this lease took possession of the Grant claim, under the terms of the lease.

A. They did. (Continuing:) They performed work under the lease. I was not there while they were actually digging but I know that they worked

(Deposition of A. G. Kingsbury.)

down where the railroad now is, and the southwest line of the claim, within the ground in controversy. I also caused the claim to be surveyed in September, 1902. I employed Mr. Arthur Gibson and he surveyed the Grant claim for the Pacific Coal & Transportation Company and afterwards furnished me with a blue-print of the survey. He surveyed it with reference [237] to the mounds that I identified, those shown in the photographs. He also at the same time surveyed the Napa claim for me. I was the owner of the Napa. In 1902 my headquarters were in town. I put my cabin or tent on the Napa in 1905. Prior to that time I had a temporary structure there. The going rate of wages for the years 1901 and 1900 in that location, was a dollar an hour and at that rate there was several hundred dollars' worth of work done on the ground by the Pacific Coal & Transportation Company. There was more work done in 1901 than in 1900. Mr. Grant nor his associates had not offered to do any work during either of those years on the Grant claim, I was not back in Nome in 1903. I quit the employ of the Pacific Coal & Transportation Company about the first of the year 1903. Miss E. L. Howard was the agent and represented the Pacific Coal & Transportation Company in Nome in 1903. After the fall of 1903 I was next back on the Grant claim the 31st of July, 1905. That was when I returned to Nome from the outside. I came in on the steamer "Senator." I started for the claim on the night of the 30th of July and moved out to the Napa.

(Deposition of A. G. Kingsbury.)

The Napa corners the Grant claim. I crossed the Grant claim in the summer of 1905 nearly every day after I moved onto the Napa. I saw the initial stake and the corners and they were still in the same place they were in when I first saw them, and where they are to-day. I was on the Grant claim again in 1906 and 1907. I observed work being done on the Grant claim in 1905 by Messrs. Bard and Muther. They were working on the southwest end very near the initial stake. They were sinking shafts, [238] and tunneling and engaged in taking out a dump of pay gravel. They sluiced during the summer but I do not fix the date. Their work was on that portion of the ground in controversy that was done on the Grant claim in 1906. I don't recall at this time whether Bard and Muther continued their work with the Russians, or whether the Russians did it on their own account. I did not have charge of the claim then but I passed there every day by their work, going to the Moonlight Springs for water. I was living on the Napa. I was less than a quarter of a mile from where Bard and Muther were working and less than a quarter of a mile from where the Russians were working. The Russians worked very near the same place that Bard and Muther worked.

Q. Do you remember in the fall of 1902, before leaving Nome, of letting any other lease than the Winter and Crawford lease?

A. Yes, to Howard and Doverspike.

Q. Did you execute that lease? A. I did.

(Deposition of A. G. Kingsbury.)

Q. On behalf of the Pacific Coal & Transportation Company? A. Yes.

Q. Do you know of your own knowledge whether they worked the Grant claim in 1902 and 1903?

A. They did. (Continuing:) They took out dumps on the southwest end within the ground in controversy. The work done by Bard and Muther were also within the ground in controversy and also the work done by the Russians in 1906 was within the ground in controversy.

Q. What was the value of the work done, including the Sperry work, on the Grant claim from 1900 to 1907, within the ground in controversy? [239]

A. I do not know exactly but it could not have been less than five thousand dollars.

Q. During that time, Mr. Kingsbury, of your own personal knowledge, did anyone ever make any claim to any of the ground where those parties worked, any claim to ownership?

A. Not except those jumpers that I named before.

Q. Did the Pioneer Mining Company or its grantors ever make any claim to that portion of the Grant claim upon which this work was done, during all those years? A. Not to my knowledge.

Q. Did Mr. Andrew Jensen or Mr. D. W. McKay or the Pioneer Mining Company ever make any claim of ownership of the ground at any time you were in charge of either the Pacific Coal & Transportation Co. or the Corwin Company?

A. No, sir.

Q. When was the first time you ever heard of the

(Deposition of A. G. Kingsbury.)

claim known as the Moonlight Bench or No. 1 Bench on Moonlight, upon which the plaintiff, Pioneer Mining Company, now claims the ground, when was the first time you ever heard of such a claim?

A. I don't remember that I ever heard of it in the earlier years; I don't recall that name as applied to any claim.

Q. Was there ever any monuments or markings of any kind or character in that vicinity, to indicate such a claim, on the ground?

A. Not to my knowledge.

Q. Were there ever any stakes or monuments or mounds of any [240] character within the Grant claim marking or claiming to mark the boundaries of a claim known as No. 1 Bench, on Moonlight?

A. Not to my knowledge. (Continuing:) I know where the East Fork of Moonlight is; it lies south of the Grant claim. The East Fork of Moonlight is usually covered by willows. There is water that runs down there when the snow melts. Water runs across the southwest corner of the Grant claim. I was in that vicinity in the years 1908, 1909, 1910 and 1911. All the time I maintained a cabin there and was back and forth. I was in that vicinity every year since 1899 with the exception of 1903 and 4, and have been very familiar with the boundaries of the Grant claim at all times. The boundaries and monuments of the Grant claim have never been moved. The first time I heard of the Pioneer claiming a portion of the Grant claim was about the time they started suit in the fall of 1910.

(Deposition of A. G. Kingsbury.)

Q. Now, Mr. Kingsbury, so as to be absolutely sure and have it in the record, you detailed to us about Mr. Grant pointing out the initial stake?

A. Yes.

Q. Just state what Mr. Grant did that day.

A. He took me to the initial stake and corner. (Continued:) We came by as we went to the initial stake, the southwest corner, but did not go to it; he in a casual way referred to it. I saw the stake at that time; it was a small willow. We then went to the initial stake and then back to the southwest corner and on around the claim. The claim was marked with small, crooked willows. We went to each corner. Mr. Grant pointed out each stake to me.

Q. How did you know they were the Grant stakes? [241]

A. Because he said they were and said he placed them there.

(Witness continuing:) I am about to leave the District of Alaska, I have a ticket on the steamship "Victoria" and expect to leave Sunday or Monday to be gone until next spring. I expect to return here next June, 1912. I am familiar with the slopes of Anvil mountain and with what is known as the westerly base of the mountain; also the contour in that vicinity. With the terraces it is a general incline from the northeasterly end or corner of the Grant claim to the southeasterly end, sloping southwesterly, to the southwesterly corner. Before the ground was disturbed in any way by mining, the

(Deposition of A. G. Kingsbury.)

Moonlight Springs was considered the base of Anvil mountain and from there easterly out toward Little Creek in a general way, it was fairly level toward Little Creek roadhouse. There was not very much slope from there. There was some terraces or benches between the springs and the roadhouse. The only level ground on the Grant claim were the terraces or benches. The southwest end of the claim was covered with willows in 1899. On the southerly side of the claim the willows extended, I should say, three or four hundred feet and came down across to the center stake.

Q. State whether or not any portion of the Grant claim took in any part of what is called the vale or valley, and if so, what part of the claim.

A. Well, it was kind of a low flat place where the southwest corner stake was located. (Continuing:) It extended off into the willows I don't know how far, but there was probably fifty feet or more of flat ground. The water flowed across the southwest corner of the Grant claim in the spring at the time when the snow was melting. [242]

Q. Do you remember being on the Grant claim about a year ago, or thereabouts, the fall of 1910, at the close of navigation?

A. I went over there about as soon as I could after the vessels had gone, as soon as I could get there with my dog team.

Q. And state whether or not anybody was mining within the boundaries of the Grant claim at that time.

(Deposition of A. G. Kingsbury.)

A. Yes, the first time I went out with the dogs.

Q. That is referring now to the time you went out with the dog team?

A. Yes, 1910, it was the last of October or first of November.

Q. Who was conducting mining operations then, if you know? A. Mr. McCumber.

Q. Do you know where his men were living at that time? A. In a red cabin on the terrace.

Q. Is that the same red cabin you photographed, the cabin being in evidence? A. Yes.

Cross-examination.

(By Mr. LOMEN.)

I came to Nome on the 10th of July, 1899, from the Kobuk. I had not been in the Nome District before that time and was not familiar with any mining claims here, and had not met Mr. Grant before that time. I met Mr. Grant shortly after my arrival in Nome. It might have been within a week and it might have been within two weeks. Grant reached the beach in a little power boat and I saw him when he landed. I got acquainted with him at that time. When we first met he informed me that he had made locations and I became interested in the claims a very [243] few days afterwards. We went out to the Moonlight claim, as we always called the Grant claim. He made a memorandum agreement on the leaf of a note-book that he had in his pocket and we signed it. It was not acknowledged or witnessed and not recorded. There were fourteen claims mentioned in the memorandum, all on one leaf of the memoran-

(Deposition of A. G. Kingsbury.)

dum-book. When we went to the Grant claim we went directly to what is called the initial stake first. It was the center end stake, but in going to it we passed the southwest corner and he referred to it but we did not go directly to that point until we had been to the initial stake.

Q. Now, Mr. Kingsbury, did you observe what was written on that stake, the so-called initial stake?

A. I tried to.

Q. Could you make it out?

A. I could make out Grant's name.

Q. On that stake?

A. Yes, sir. (Continuing:) I did not fully make out anything else at that time. I saw another stake there. There might have been two. My impression now is that the other stake was driftwood or something of that sort. The willow stake was the Grant stake. I did not see anything else written or posted on those two stakes. Grant's certificate was gone, he remarked that as soon as we got there. We passed around the claim before we struck the northwest, that was the last stake we visited. At the northwest corner we found a small crooked willow. I did not see any writing on it nor any split in the top of the stake. I would not swear that it had not been opened at the top but I did not see it. There was a split at the top of the initial stake. [244]

Q. How do you come to remember that?

A. Because Grant was a man of many words and he exploded when he found the notice was gone and called my attention to that particular fact by his re-

(Deposition of A. G. Kingsbury.)

marks. He was not asking me to look at it.

Q. Did he tell you how he originally staked his claim, or with how many stakes?

A. Well, it worked out in his showing me. He did not tell me but he showed me. (Continuing:) I was familiar and fairly well acquainted with that part of the country. I have lived on the Napa claim more or less ever since 1902, except the two years I was gone. The Oldbaum claim joins the Napa claim on the west. I knew C. L. Spanggard but I did not know Otto Schueler. I am not sure but I think Rudolph located the Oldbaum claim. The westerly side of the Oldbaum claim is identical with the easterly side of the Napa as they were originally staked. There was a number of claims staked in there afterwards, the Little Johnney Fraction, the Gaffney Fraction, No. 2 East Fork on Moonlight, the Winter Fraction and the Carlson claim. The Eagle claim was down in there somewhere, I never could keep up with it, I remember hearing about the Jerome Fraction but I don't know its boundaries. I first knew the Napa claim in 1902. It was called the Depue claim, had the same corners.

Q. Now, the Carlson claim as you understood it, conflicted with the Napa? A. Yes, sir.

Q. And were these lines afterward corrected so as to make the lines parallel with the Napa?

A. Yes, sir.

Q. When was that? [245]

A. I don't know, two or three years ago. (Continuing:) The No. 2 East Fork on Moonlight claim

(Deposition of A. G. Kingsbury.)

was staked a few days after the Napa; I do not remember the date of the Carlson location. When I bought the Napa claim I examined all of the corners. I don't remember whether I found any other stakes at the northwest corner of the Napa at that time or not. There might have been a stake there. I examined the southeast corner stake of the Grant claim when I first went there with Grant. I have been often at that corner since, and the corner is now where it always has been. There have been several stakes that appeared and disappeared at that corner since I was there with Grant. There is a ditch that passes that point, put there since. There have been two prospect shafts put down on the Oakland claim that are not very far from that corner. I don't know the boundaries of the Oakland claim. I never paid much attention to small excavations that were without the claims in which I was interested. I do not know where the northwest corner of the so-called Nelson or Carlson claim is. There is a stake just up on the terrace above the willows on the part of the bank that is directly east of the cabin; there has been several stakes there. They were not mounded up very much, maybe a little, hardly to notice. There might be two bunches of stakes there at the present time, I don't remember about that. The first bunch you speak of it was sometime ago I first observed them, one stake several years ago.

Q. And did you ever look to see what was written upon those stakes? A. Yes, sir.

Q. What did you find on them?

(Deposition of A. G. Kingsbury.)

A. I never found anything that I could make out what it was. [246]

(Witness continuing:) I know a survey stake usually when I see it, there would be a nail in it. I don't remember seeing one scribed at that point. The first stake I noticed at that point was a small slender stake standing $4\frac{1}{2}$ feet, I should guess. That was when I first saw it, when I built my cabin on the Napa in 1905. Since that time other stakes of the dimensions 2x4's and 2x3's have appeared at that place; I could not say positively when.

Q. Now, immediately east of that bunch of stakes did you find a small cut? A. Close to it?

Q. Yes, small excavation.

A. I have seen—what claim are you talking about?

Q. I am talking about the center of the Grant claim, about 200 hundred feet from the south line of it.

A. Well, no cuts but in the bank of this terrace which I—

Q. You are getting back to the southwest corner of the Grant claim?

A. No, I am halfway up—

Q. All right.

A. In that terrace, in that bank there has been more or less excavating on what I supposed was the Carlsen—

Q. Yes, but very close and within seven feet of the stake, there is an excavation that looks very old, is it there today? A. I do not know.

Q. Do you know who occupies the cabin on the

(Deposition of A. G. Kingsbury.)

Grant claim that you referred to?

A. Now, at the present time?

Q. Yes.

A. A man by the name of Smith. (Continuing:) He did not tell [247] me that three people were up there examining that cut last fall. I caused the Grant claim to be surveyed September 30, 1902, by Arthur Gibson. I do not know who carried the lines for him. I was there at the time and A. W. Lane and Spanggard. We were visited by Pat Winters and his associate. At that time we surveyed both the Napa and the Grant claims. Gibson said nothing to me at that time that I remember about surveying Bench No. 1 on Moonlight.

Q. Did you mention Andrew Jensen at that time in the presence of Arthur Gibson, Lane and Spanggard and discuss the question of the overlap of Bench No. 1 Moonlight affecting the Moonlight?

A. I don't remember of any such conversation, don't remember of having known of Mr. Jensen at that time.

Q. Did Mr. Spanggard tell you about any claim that was overlapping the Grant claim at that time?

A. I don't know that Mr. Spanggard discussed any ground excepting the Napa with me. (Continuing:) I don't remember that Spanggard discussed any of the claims, he had no reason to discuss them with me. I do not remember any remarks that Spanggard made. Spanggard and Lane were not interested in the claims except Spanggard was the agent for Gruer the former owner of the Napa.

(Deposition of A. G. Kingsbury.)

Gruer was not interested in the Pacific Coal & Transportation Company or the Corwin Company. Spanggard and Lane were present at the request of myself to identify the corners of the Napa. They did not identify any other corners of any claims to my knowledge at that time. I was with them while we surveyed the Napa. I don't think I went to all the corners of the Grant claim with them at the time.

Q. Did Mr. Spanggard in your presence and in the presence of [248] Mr. Gibson, out there on the ground at the time of the survey, explain how and by whom the Depue, the Nelson and the Moonlight No. 1 Bench claims were located?

Mr. GILMORE.—Objected to as calling for hearsay evidence.

The COURT.—Objection overruled, to which ruling of the Court the defendants then and there excepted and the exception was allowed.

A. All I remember is that something was said about the Depue location, that is what vitally interested me. (Continuing:) I would not swear that he did not mention the Nelson Bench or Bench No. 1 Moonlight; I know that Spanggard identified the four corners of the Napa, I do not know that he identified anything else. I don't remember of hearing any conversation between Mr. Spanggard and any other person excepting regarding the claim for which I had him out there. Mr. Spanggard may or may not have identified the corner stakes of the Moonlight No. 1 Bench, I don't know. There might have been conversations between Spanggard and others

(Deposition of A. G. Kingsbury.)

about other claims than the Napa but if such conversations occurred I took no notice of them. They might have occurred. Spanggard may have pointed out the approximate place for the southeast and northwest corners of Moonlight Bench No. 1, but he did not do so to my knowledge.

Q. Did Mr. Gibson call Mr. Spanggard's attention to the fact that Moonlight Bench No. 1 overlapped or conflicted with the Robert Lyng claim, his Moonlight claim?

A. If he did I have no recollection of it, because it had no effect on me.

Q. Did Mr. Spanggard at that time, in the presence of Mr. [249] Gibson and Mr. Lane, say: "We made a location of the Moonlight Bench No. 1 overlapping Moonlight claim and we located it so intentionally to take in all the vacant ground between the Nelson Bench and the Moonlight claim"?

A. He may of but not to my knowledge.

Q. Did you not at the time ask Mr. Spanggard how it could be that Andrew Jensen, being a witness on the Grant location, would permit Grant to make his location overlapping the Moonlight Bench No. 1?

A. I do not remember asking that question. (Continuing:) I do not think so, and I do not remember any reply. As I remember it now, it seems to me I left a little before Gibson was through completing his survey. I don't know as a matter of fact, that Gibson also surveyed No. 2 Moonlight after completing the Napa and Grant. He may have, I don't know. The northwest corner of the Napa is six or

(Deposition of A. G. Kingsbury.)

ten feet perhaps over the line of the Grant. I first learned of the conflicting claims with the Grant claim about a year ago.

Q. You mean to say you never heard of the Moonlight or No. 1 Bench Moonlight prior to last year?

A. I suppose I have heard of it.

Q. Do you know who claimed it?

Mr. GRIGSBY.—I would like to have it entered in the record that Mr. Arthur Gibson is of counsel in this case.

Mr. GILMORE.—Please also note that he is coaching the attorney what to ask; that he is present and frequently coaching the attorney what to ask.

(Witness continuing:) I know where No. 2 East Fork Moonlight [250] claim is. I think it was located just after the Napa, in 1899. No. 2 East Fork runs east and west, the northwest corner of No. 2 East Fork must have been away off the Napa, it may be on the Grant but I hardly think so. The No. 2 East Fork claim overlapped the Napa, it took off about half of the Napa, that is what worried me.

Q. Yes, didn't it take off of the Nelson Bench too?

A. I suppose so.

Q. And didn't it extend west along the Nelson Bench?

A. It must have. (Continuing:) The south line of No. 2 East Fork was above the south line of the Napa. I never measured No. 2 East Fork, but I suppose it was 600 feet. I did not know Mrs. Elizabeth Carlson, now known as Mrs. C. J. Jorgensen. I have seen people at work several times on the Carlson

(Deposition of A. G. Kingsbury.)

claim during the time I have lived in that vicinity, during various years. There is a bank running along near the south line of the Grant claim above the line of willows. I never saw anyone working above this bank or north of the willows that I ever supposed was doing assessment work on the Carlson claim. After 1903 I took no notice about where they were working so long as they were off the Napa. I did not know as much about the Nelson or Carlson claim as I did about the Grant. I had a casual interest in the Grant claim because of my former association in it and being a part owner in it.

Q. But you did observe last year that there was such a claim or that someone claimed such a claim as Bench No. 1 Moonlight?

A. Yes, but I did not have the name impressed on my mind.

Q. You know where the corners are, approximately, of that claim? A. I don't believe I do.
[251]

Q. Haven't they been pointed out to you recently?

A. In a general way, I could not go and show you—

Q. No, but you could show me the stakes of the Grant claim? A. You bet I could.

Q. You couldn't show me the Nelson stakes or the Carlson stakes?

A. No, not all of them. (Continuing:) I don't remember seeing any keystone drill in the immediate vicinity, except on No. 2 Moonlight when the Wild Goose were drilling there; there has been other drills but no keystone, that is the only place I remember

(Deposition of A. G. Kingsbury.)

seeing a keystone drill. I don't remember seeing any horses working there with scrapers. I don't know who owned the claim north of the Grant claim. I never saw McKay in that vicinity and if there were men under his employ working out there I would not know it, perhaps. I would not swear that there had been no drill holes sunk on any portion of what is called the Grant claim. There was a gasoline drill on that ground as late as 1907. It was operated by Sperry and Sam Waysman and associates; they had a lease on the ground.

Q. I ask you whether you will swear that from September 15, to October 1st, 1907, there were not ten holes sunk with a keystone drill to the depth of about thirty feet, in part of the Grant claim, what you call the Grant claim?

A. That was inside of two weeks and I saw no keystone drill in that neighborhood at any time. (Continuing:) Most likely I was doing assessment work during that time about seven miles from there on other property.

Q. What proportion of the time have you been absent from the Grant claim or the Napa claim each year during the time since you first knew the Grant claim? [252]

A. Oh, some of the time I have lived there pretty continually and then I would be out on other property. I have averaged from one to six months every year, I mean from the time I first built my cabin there in 1905.

Q. How long a time did you spend there between

(Deposition of A. G. Kingsbury.)

July, 1899, and the fall of 1902?

A. My time being there consisting in various visits to the Grant claim, and to the Napa after I acquired that. (Witness continuing:) I kept no cabin there but I have been in a tent on the Grant claim. The cabin on the Grant claim has been moved once or twice. It has been on different parts of the claim. I don't know whether it is occupying the place it was moved to from that point now or not. I don't know when it was built. I don't know positively that that is the same cabin that was first put on the central part of the claim up near the ditch. I suppose it is the same cabin that was there last year.

Q. Has it been in its present position for two years last past?

A. I would not think for two years but perhaps it has, I would not say it has not. (Continuing:) It is within the area in conflict at the present time; I think it was not before it was moved. I did not know Andrew Jensen.

Q. The first season you became acquainted with the ground, the Grant claim, did you go over the ground with the view of ascertaining if there were any cuts or marks of any kind visible on the surface of that claim?

A. Yes, I frequently went by that ground and over the ground. (Witness continuing:) I would not swear that there were no cuts. I do not remember a man by the name of Lewis Johnson. I may know a man by the name of Langstrom, but not by that name. [253] There were various other people

(Deposition of A. G. Kingsbury.)

occupying the Caribou cabin on No. 2 East Fork Moonlight, but I did not know their names. It seems to me there were some tents on No. 2 East Fork and No. 1 Bench in the earlier years, but I don't remember, don't identify any in my mind, any cabins. There were a great many willows on the Grant claim in and about the southwest corner of the Grant claim. The willows extended from the southwest corner of the Grant claim past the initial stake and along the west line of the Grant claim, from there they disappear and appear again, as I remember near the northwest corner. The Grant stakes were willow stakes; the center stake was a larger one, and there was a small willow not over an inch and a quarter at its largest end, and the next largest one was at the northwest corner, and the others were very small; they were less than an inch in diameter. The initial stake was hardly three feet tall, the northwest not quite so tall, and the rest about two feet. The natural growth of willows is from two to four feet high in that vicinity.

Q. Did you file an amended location of the Grant claim at one time? A. Yes.

Q. When was that?

A. I have forgotten the date.

Q. It was in October, 1902, was it not?

A. October, 1901.

Q. Did you place any stakes at that time?

A. Yes, I think there was—that was the time I placed the 2x4's. I remarked the stakes when I placed the 2x4's.

(Deposition of A. G. Kingsbury.)

Q. What was your object in filing the amended location? [254]

A. I don't know, it runs in my blood to do that.

Q. On the theory that the more times you stake the less others will jump?

A. Well, perhaps that is what prompted—

Q. You followed that custom?

A. I have done it a great many times.

Q. In your amended location you said the purpose of it was to take in new ground in that locality?

A. I suppose I was following some form that I thought an amended notice required. (Continued:) I have heard of the What's Left Fraction. I have not examined the stakes, I had them pointed out to me. Mr. McCumber pointed them out to me.

Q. You advertised your copartners out at one time? A. Yes, sir.

Q. Who were your copartners, co-owners?

A. I can't tell you by name, except Grant, I don't remember.

Q. What interest did you have in the Grant claim at the time you advertised the co-owners out?

A. My stock in the Pacific Coal & Transportation Co.

Q. And what interest did the Pacific Coal & Transportation Company have in the Grant claim at the time you advertised the co-owners out?

A. They were the owners.

Q. What undivided part?

A. Half or fifty-one one-hundredths.

Q. And there were other copartners, other owners

(Deposition of A. G. Kingsbury.)

besides Grant? A. Yes, sir.

Q. What did you pay for the undivided one-half of the Grant claim? [255]

A. One thousand dollars. (Continuing:) That was paid in the month of March, 1900. We advertised them out in 1902. The company took the matter up and corresponded with the co-owners. They did it under my advisement. I notified the company to get after them for their share of the work. I think Albert Merrill has the correspondence. He lives in Manchester, N. H., now. Miss E. L. Howard succeeded me as agent; she had charge of the property until the following summer, 1903, and then Captain West took charge of it under the advice of W. H. Bard. Mr. Bard was afterwards agent of the company and issued leases. I had no conversation with Mr. Bard about whether he was told to quit work on the Grant claim by any one or not. I have never heard of anyone that was working on the Grant claim having been told to quit by any claimant of the ground.

Q. Are you very sure that you never heard anyone claim any portion of the Grant claim by reason of an overlap and a prior location?

A. Not of any of the people who own anything around there now.

Q. Anyone representing the Pioneer Mining Company? A. No.

Q. Anyone representing D. W. McKay?

A. No.

Q. Anyone representing Andrew Jensen?

(Deposition of A. G. Kingsbury.)

A. No. [256]

Redirect Examination.

(By Mr. GILMORE.)

Q. Counsel asked you about a cabin on the Grant claim that is out there now, with reference to its position, Mr. Kingsbury; you don't know whether the cabin that is there now was the cabin that stood further up on the claim or not?

A. I don't know, no, sir. It didn't look to me like the same cabin, perhaps it is.

Q. You don't know that it is a fact that this red cabin that is now on the Grant claim was hauled from the town of Nome two years ago and has never been moved, you would not swear that is not so?

A. I would not swear either way. (Continuing:) I was giving my best recollection, I have never been told anything about it.

Q. Now, with reference to the so-called Caribou claim, did you as owner of the Napa claim ever have any litigation over the Napa?

A. With the Caribou Mining Company, who owned No. 2 East Fork Moonlight.

Q. And who is the owner of the Caribou now?

A. Pioneer Mining Company.

Q. With whom did you settle your differences in the litigation?

A. Jafet Lindeberg. (Continuing:) I got a deed from the Pioneer Mining Company or Jafet Lindeberg, to the ground in controversy.

Q. Now, do you know where Mrs. Carlson-Jorgensen's claim was at the time of this Napa Caribou

(Deposition of A. G. Kingsbury.)

lawsuit? A. I know where she claimed it. [257]

Q. State whether or not it was surveyed and so marked to show that the Carlson claim covered the identical ground with the Napa, at the lower end, was it so marked by surveyor Gibson, if you know?

A. I have seen a map showing that.

Q. And where was the south end of the so-called Carlson claim with reference to your stakes?

A. Our corner stakes were identical lapping the Carlson diagonally across my south end.

Q. Do you know when the Carlson claim so-called was claimed to be in its present form as claimed by the plaintiff in this lawsuit, lying to the west of your Napa claim on the ground?

A. I don't remember when I first saw the notice on the southwest corner of the Napa to that effect, but I should think it was about two years ago.

Q. Was that before or since Jafet Lindeberg gave you a deed to the conflict? A. Since.

Q. Did Mrs. Carlson or Jorgensen, whatever her name is, ever claim that her claim lay west of this, at any time prior to the time Mr. Lindeberg gave you the deed?

Mr. LOMEN.—Objected to as calling for conclusion of the witness.

The COURT.—Objection sustained, to which ruling of the Court the defendants then and there excepted and the exception was allowed.

(Witness continuing:) I never heard the word "Nelson" in connection with any of the overlaps of the Napa. P. D. Winter [258] might have been

(Deposition of A. G. Kingsbury.)

in possession of the ground west of the Napa toward what is called Moonlight Creek, but I don't know who mined on the Winter Fraction. I expect the Pioneer Mining Company owns all those fractions now.

Q. Do you know who owns the Jerome Fraction?

A. I am not positive, I suppose the Pioneer.

Q. Who owns the Carlson location, if you know?

A. I saw in the paper that the Pioneer Co. did.

Q. Who owns the Napa now? A. The Pioneer.

Q. You sold that to the Pioneer? A. Yes.

Q. When? A. This fall.

Q. State whether or not you staked a water right on the Grant claim at any time while you were in charge of the Grant claim, or interested in it.

A. Yes. (Continuing:) I staked one in the earlier years I could not say just when. I think I recorded it in the recorder's office of the Nome Recording office. I staked it in the lower part thinking I could take up the Moonlight Spring water in the channel that runs under the slide from Anvil mountain.

Mr. GILMORE.—I now offer in evidence, if the Court please, a certified copy of the water right mentioned by the witness in his evidence for the purpose of describing the boundaries of the claim with reference to natural objects in that vicinity, and for the purpose of showing possession of [259] the ground in controversy at the time, in the Pacific Coal & Transportation Company.

Mr. LOMEN.—Objected to as incompetent, irrele-

(Deposition of A. G. Kingsbury.)

vant and immaterial.

The COURT.—Objection sustained, to which ruling of the Court the defendants then and there excepted and the exception was allowed.

Mr. GILMORE.—I ask leave to have the clerk mark it for identification.

The COURT.—The exhibit may be marked Defendants' Exhibit 26 for Identification. Which said exhibit was in words and figures as follows:

[Defendants' Exhibit No. 26.]

#16825.

NOTICE OF LOCATION OF WATER RIGHT.

Nome, District of Alaska,

Sept. 2d, 1902.

I hereby claim for mininf mechanical and other useful purposes all the water within the limits of this Mining Claim known as "No. 1" bench on "Moonlight" upon which this notice is posted, both the surface water thereon and any water that has been heretofore discovered or that may be hereafter discovered in the gravel beneath the surface of the said claim,—

This claim was staked by W. N. Grant on January 9th 1899, by A. G. Kingsbury, Agent.

Filed for record 12:10 P. M., Sept. 17th, 1902.

Request of A. G. Kingsbury.

T. M. REED,

Recorder.

W. W. Sale,

Deputy.

(Recorded in Vol. 71, page 162.) [260]

(Deposition of A. G. Kingsbury.)

Q. Do you know whether or not that water right was ever amended by anyone connected with the claim?

Mr. SCHOFIELD.—Objected to as immaterial.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

Q. Mr. Lomen directed your attention to some stakes that stand a little north and east of the red cabin, and near the center of the Grant claim?

A. Yes.

Q. And you stated that there were several there several years ago, I believe you said in 1905?

A. Yes.

Q. State whether or not you saw any stakes there at that point in the year 1902, or prior to that, at that place.

A. I didn't see any. (Continuing:) The character of the surface of the ground where those stakes are now standing is open ground and no willows.

Q. State whether or not if there had been any stakes at that point, prior to the time of the Gibson survey in 1902 you would have observed them.

Q. I would have seen them. (Continuing:) In 1899, 1900, 1901, during my visits over the claim I do not remember of ever seeing any stakes at that point. I have recently seen what is called the Jensen claim. In 1899, 1900, 1901 and 1902 I was over that portion of the ground and I don't remember ever seeing any stake at that place, or any marking of any kind or character to indicate the corner of a claim

(Deposition of A. G. Kingsbury.)

there. From my observations in going across the claim at that point, if there had been a stake I should think I would have seen it. I knew [261] Sperry when he was living. He had a lease from the Pacific Coal & Transportation Company, in 1907 on the Grant claim. He drilled on the claim, I don't know how many holes. I think he started with a drill and then changed to another. I know L. F. Wood, a red-headed fellow. He was working there. I do not know Captain Anson by name. I do not know Mr. C. S. Johnson, by name. There was a fellow by the name of Sperry and a man by the name of Waysman working for Captain Sperry. Captain Sperry and his men were drilling there more or less through the winter. They drilled a good many holes, part of them within the ground in controversy. I know about where the Eagle Fraction is. Some of their stakes they placed within the ground in controversy. [262]

Recross-examination.

(By Mr. SCHOFIELD.)

Q. When you first saw the Grant claim, is it not a fact that it was staked with only two stakes?

A. No, sir.

Q. How many stakes marked the western boundary of the Grant claim?

A. Three. (Continuing:) The character of the surface of the ground at the westerly side of the claim is somewhat uneven on the south slope, the highest point there being the northwest corner. I have lined up the westerly stakes of the Grant claim.

(Deposition of A. G. Kingsbury.)

They were not in a straight line. The center stake stood up the hill out of line, perhaps six feet. I was a party to the lawsuit of the Caribou Mining Company against Howard and Kingsbury. I don't remember of ever meeting Elizabeth Carlson or knowing her.

Q. Isn't it a fact that you knew at that time that the southwest corner stake of the Napa claim was the southeast corner of the Carlson Bench?

A. I did not know it until I saw the notice posted on the southeast corner about two years ago. (Continuing:) The northwest corner of the Napa stands right on the ditch line. I became interested in the Napa in the fall of 1902. I did not know anything about the claims in that vicinity prior to that time, except as to the Grant claim. The first cabin that was put on the Grant claim was down close to the railroad, near where the railroad is, above the track.

Q. Now, this Bard and Muther cabin you speak of was a tent?

A. There was a cabin attached to it. There was a wood cabin there. [263]

Q. How long did that remain there?

A. I could not say.

Q. I want to know how long that cabin you call the Bard and Muther cabin remained there where you say it was situated?

A. It must have been two years.

Q. Do you know what became of it?

A. No, sir.

Q. Now, the next cabin that was placed upon the

(Deposition of A. G. Kingsbury.)

ground was placed at what point upon the Grant claim?

A. Halfway the length and towards the northerly side. (Witness continuing:) I don't think that cabin was within the ground in controversy, I think it stood a couple of hundred feet north of the Caribou claim. There was another cabin put on, or the same one moved down, but I think it was another moved on.

Q. Do you know who placed the cabin at that point, north and west of the Carlson Bench?

A. I suppose it was Mr. McCumber.

Q. Now, will you please draw in with a lead pencil, the east side line and the west side line of the so-called Carlson location as claimed on the ground at that time by Mrs. Carlson-Jorgensen during the lawsuit entitled Caribou Mining Co. v. Kingsbury and Howard?

Mr. SCHOFIELD.—Objected to as incompetent, immaterial and irrelevant.

The COURT.—Objection sustained, to which ruling of the Court the defendants then and there excepted and the exception was allowed.

Q. Draw it approximately, Mr. Kingsbury, as near as you can, showing where it was claimed at that time, the Carlson location as marked on the ground, and write the word "three" and draw a circle around it. [264]

A. Witness draws line.

Q. Now, please draw the west line of the Carlson location as claimed at that time, where the west

(Deposition of A. G. Kingsbury.)

boundary side line was, and mark it with the word "four" and draw a circle around it.

A. Witness draws and indicates as directed.

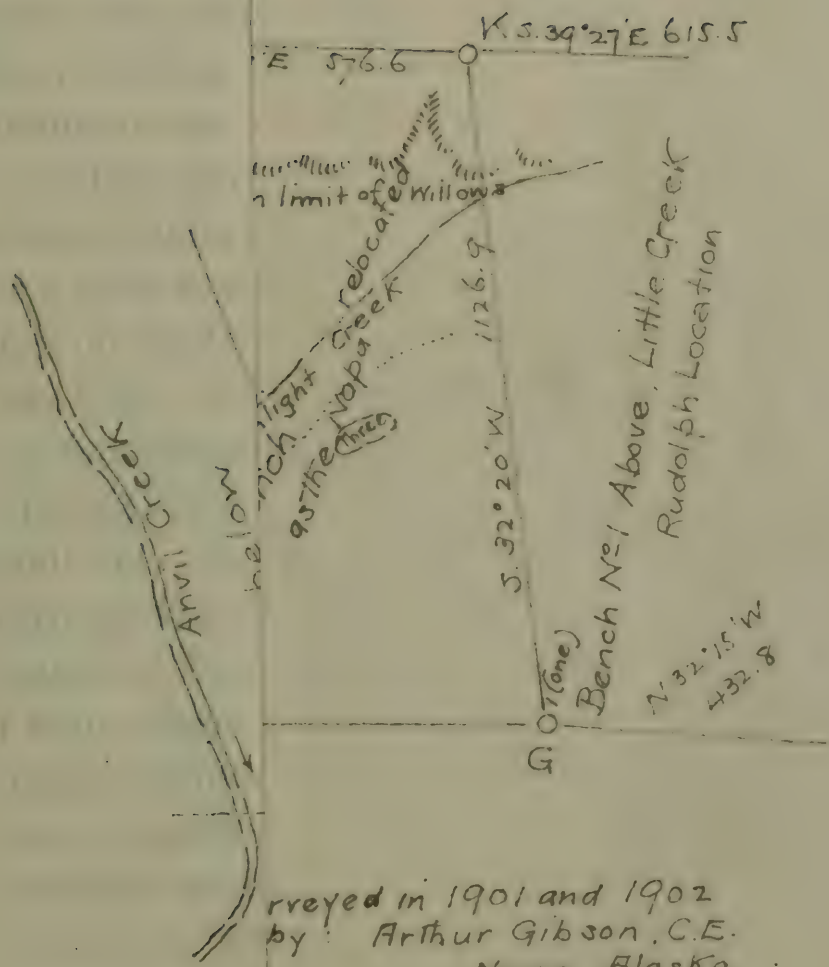
Q. Prior to the time you got your deed from the Pioneer Mining Company state whether or not the Carlson location was marked on the ground the south end, at the point H and G as shown on the map.

Mr. COCHRAN.—Objected to as incompetent and not binding on us.

The COURT.—Objection sustained, to which ruling of the Court the defendants then and there excepted and the exception was allowed.

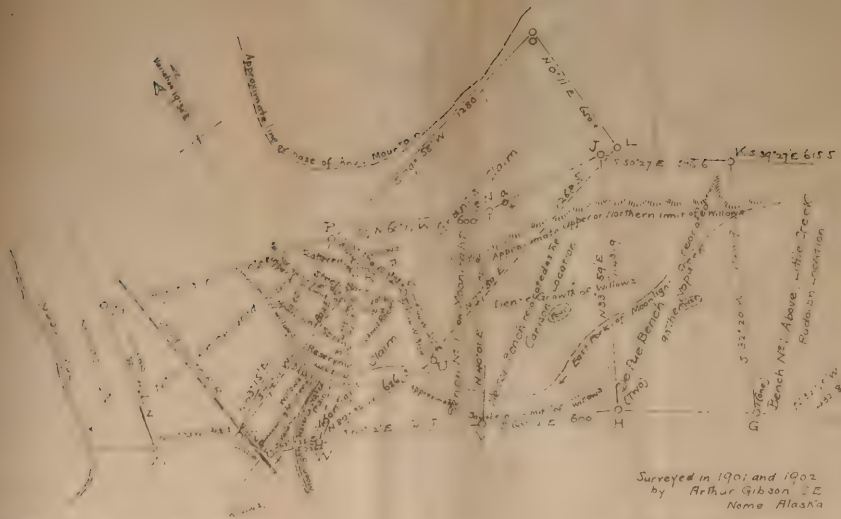
Mr. GILMORE.—We offer the plat identified by the witness in evidence, if the Court please.

The COURT.—It may be received in evidence and marked Defendants' Exhibit 27, said exhibit being as follows: [265]



urveyed in 1901 and 1902
 by Arthur Gibson, C.E.
 Nome, Alaska.

Defendant Scale 1" = 400 ft



Deferuntur. 11:27

Ethel Luella Howard, a Witness for Defendants.

ETHEL LUELLA HOWARD, being first duly sworn, testified as follows:

My name is Ethel Luella Howard; I am known by my initials as E. L. Howard. I first came to the Nome District in 1899. I first came to Alaska in 1898. I know Mr. A. G. Kingsbury. I have known him since 1898. I know a claim in the Nome District called the Grant claim. My business in Nome has been mining and cooking. I own some mining claims in the vicinity of the Grant claim and have owned property in that vicinity since 1900. I own a bench claim off from Cooper Gulch, about one-third of a mile in distance from the Grant claim. I was first on the Grant claim in the early part of September, 1899. I was looking for a chance to locate some ground through the willows there. I am familiar with the claim as shown on the map, Defendants' Exhibit 11. In September, 1899, I passed down through the willows as shown on the map, between points 2—1 over on the west end of the Grant claim. I know where the Moonlight springs are. I first saw them in September, 1899. When crossing the ground then I saw three blazed willow stakes with the name of Grant on them. I did not know Mr. W. N. Grant. In the year 1900 I made several trips prospecting for a time through the summer. One of the three willow stakes that I speak of was near the center of the willows, very near to the springs. I did not stake any ground in that vicinity. I passed over the Grant claim two or three times in the summer of 1900. My

(Testimony of Ethel Luella Howard.)

own claim on the Cooper Gulch was northeasterly from there. I knew a company called the Corwin Trading Co. I also know the Pacific Coal & Transportation Company, I was in its employ and had charge of its property at one time. In the summer of 1901 I did cooking for the company. It had offices in [267] the east end of town down about a quarter of a mile east of the Standard Oil in the direction of Fort Davis. I was engaged in cooking there in the summer and fall of 1901. Mr. A. G. Kingsbury had charge of its mining and property. I recall Mr. Kingsbury making some stakes and preparing some notices with reference to the Grant claim in September or October, 1901. I saw him paint five stakes with black paint. He painted them in the warehouse but they were dried in the mess house. I saw them there. I do not know what kind of paint it was, it was black paint he used. He painted the figure on each stake, numbering 1, 2, 3, 4 and 5. He wrote out an amended location notice for the Grant claim at that time and I signed it as a witness. It was made out the 4th of October, 1901, I believe. I think I signed it in the office building over in the east end of Nome. The notice was made in duplicate. I signed two of them as witness.

Q. Just glance at this Exhibit No. 16, the amended notice of the Grant claim, and state, if you know, whether that is a copy of the one that you signed at that time, in October, 1901. Is that in substance a copy of what you signed at that time?

A. Yes, sir. (Continuing:) In the summer of

(Testimony of Ethel Luella Howard.)

1902 I did some prospecting and I did some cooking there.

Q. Miss Howard, so as to get it in the record and inform the Court, state whether or not you do prospecting work of your own, on your claims.

A. I do.

Q. I mean physical work of mining, digging and mining? A. Yes, sir.

Q. State whether or not you have done that character of work for a number of years. [268]

A. Yes, sir.

Q. Did you do any prospecting in the year 1902?

A. Yes, sir. (Continuing:) I prospected near Cooper Gulch and also Anvil Creek. I was out on the Grant claim in 1902 while doing work in that vicinity, about the latter part of July or first of August. At that time I saw the amended notice that I had signed as a witness, on the initial monument stake of the Grant claim. I noticed it several times that summer while passing to and from the springs for water. The notice was on the initial monument stake of the Grant claim. I knew a claim in that vicinity called the Moonlight or Lyng claim. This amended notice that I speak of was at the easterly end of the Lyng claim. Mr. Kingsbury went outside to the states in the fall and winter of 1902 and I was left in charge of the property of the Pacific Coal & Transportation Company. I had charge of the Grant claim that winter.

Q. Do you know of your own knowledge whether or not any work was done on the Grant claim during

(Testimony of Ethel Luella Howard.)

the winter of 1902 and spring of 1903?

A. Yes, sir.

Q. Who performed work on the claim?

A. Howard and Doverspike and their partners.

Q. Who was that Howard, was he any relation to you? A. No, sir.

Q. State whether or not they operated that winter under a written lease, if you know.

A. Yes, sir. (Continuing:) As near as I can remember, Howard and Doverspike worked on the Grant claim about the first of December, 1902, and worked continuously until the middle of May, 1903. I was out on the Grant claim during that time. They worked down through the willows. On the map, Exhibit 11, I [269] mark the place where they worked with the number "55." They were taking out a dump there and did some prospecting. I don't remember how many times I was on the claim there during the time they worked there. I was there a number of times, as near as I can remember it would be about once a week. There were four men all of the time, I think, working there, and I think they had five men part of the time, I am not sure. In the spring, about the middle of May, 1903, they commenced to sluice. They quit work on that ground on account of an injunction that was served on them by the Moonlight Springs Water Co. I heard Mr. Lindeberg's deposition read to the Court, stating that the dump that had been taken out by Howard and Doverspike was all sluiced up when he arrived in Nome in June, 1903. The dumps were not all of

(Testimony of Ethel Luella Howard.)

them sluiced up in June, 1903. They were washed up after the month of June, 1903, to my own knowledge. I know the value of labor per day during the winter of 1902 and spring of 1903, on the ground, the Grant claim, in the Nome District. The going rate of wages that winter was three to four dollars a day, I think, with board.

Q. Now, will you please state the approximate value of the work done by Messrs. Howard and Doverspike and their associate between the time they went to work in the fall of 1902 on the Grant claim, and the time they quit work in the month of May, 1903?

Mr. COCHRAN.—Object to the question on the ground that the witness has not shown herself qualified to answer the question.

The COURT.—Objection sustained, to which ruling of the Court the defendants then and there excepted and the exception was allowed. [270]

(Witness continuing:) While I had charge of the Grant claim during the winter of 1902 and spring of 1903 I never heard of anyone making any claim to the Grant claim or any of the ground embraced within its boundaries.

Q. State whether or not the Pioneer Mining Company, or Andrew Jensen or D. W. McKay, or anyone on their behalf, made any claim whatsoever to any part of the ground embraced within the Grant claim during the time you had charge of it.

Mr. COCHRAN.—I object to the question being wholly irrelevant and immaterial.

(Testimony of Ethel Luella Howard.)

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

Mr. GILMORE.—I offer to show by the witness that while she was in charge of the claim, in authority, she visited it frequently; and that while on the claim during the winter as heretofore testified to by her, the Pioneer Mining Company were mining on adjoining ground in that vicinity and never at any time to her, or to anyone else, to her knowledge, did they make any claim or contention whatever that they owned the claim or the ground within the Grant stakes.

Mr. COCHRAN.—We object to the offer as being irrelevant and immaterial.

The COURT.—Your offer is not in accordance with your question.

Mr. COCHRAN.—I don't think your Honor should [271] pass upon the offer at this time.

The COURT.—I will not pass upon it at this time. I said the offer was not in accordance with the question. That has been ruled upon by the Court. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

Q. I will ask you now, Miss Howard, do you know Andrew Jensen? A. No, sir.

Q. Do you know D. W. McKay? A. No, sir.

Q. Did you know the Pioneer Mining Company or any of its officials in the winter of 1902 and the spring and summer of 1903?

Mr. COCHRAN.—We object to that as being irrelevant and immaterial, whether she did or did not

(Testimony of Ethel Luella Howard.)

prior to the acquisition of the property.

Mr. GILMORE.—Unfortunately for the counsel on the other side, Mr. Lindeberg testified that he had an equitable title to it by virtue of written options.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

(Witness continuing:) During the winter of 1902 and spring of 1903, while I was upon the Grant claim, I did not see anyone else upon the claim mining or working in any manner whatever other than Mr. Howard and Mr. Doverspike and their associates; and during that time I did not observe anyone on the [272] Grant claim other than those gentlemen, claiming possession or ownership of the claim, or the ground embraced within the Grant claim. I know a man by the name of Hopkins. I gave up the care and attention of the Grant claim for the Pacific Coal & Transportation Company about the first of July, 1903, and was succeeded by Mr. W. H. Bard and Captain West of the steamer "Corwin." I knew of a man by the name of J. C. Muther, but I was not acquainted with him. I knew Mr. Bard personally. I know of my own knowledge that work was done on the Grant claim in the summer and fall of 1903. I was upon the Grant claim in the fall of 1903. Mr. Hopkins and his partners were working on the Grant claim that fall, near the same place that I indicated where Howard and Doverspike worked. I know the ground in controversy in this lawsuit. The work done by Howard and Doverspike, and that

(Testimony of Ethel Luella Howard.)

done by Mr. Hopkins, was done within the ground in controversy. I knew where Mr. Hopkins lived while at work there. He lived in a cabin that the laymen on the Napa used to occupy while I was out there. I understood that Mr. Bard was interested with Hopkins. I crossed over the Grant claim in 1904 and 1905 but I never paid attention to the ground. When I was in charge of the claim in the winter of 1902 and spring of 1903, I observed the boundaries of the Grant claim. The boundaries were marked. The initial stake was a 2x4 marked 1, in a good-sized sod mound. I saw the stake marked No. 2 at the southwesterly corner; stake marked 5 at the northwesterly corner and stake marked 4 at the northeasterly corner, and stake marked No. 3 at the southerly corner. I recognized the stakes in 1902 as the stakes that Kingsbury painted at the office of the Company in October, 1901. The corner stakes were well mounded. The stakes at the point 2 and 5 on the map [273] were at the same place that I saw the willow stakes in September, 1899. I was on the Grant claim this past summer and at that time went up to the corners. The corners were in the same place where I observed them in the winter of 1902 and 3, and the easterly corners were in the same place that I observed a willow stake in September, 1899.

Q. Have you any interest whatever in the result of this lawsuit, Miss Howard?

A. I positively have no interest whatever.

Q. Have you any interest in the Pacific Coal &

(Testimony of Ethel Luella Howard.)

Transportation Company?

A. I positively have none. (Continuing:) While I was out there this summer I saw a red cabin on the ground.

Q. Now, on the ground, a little northeast of the red cabin, at a point shown as point 9 on Exhibit 11, did you observe this summer some stakes at that point? A. Yes, sir.

Q. When was the first time you saw any stakes at that point on the Grant claim?

A. The latter part of October, 1902, when I had charge of that property.

Q. And state whether or not you had passed by that point in the years prior to 1902?

A. During the seasons when I was at the camp out there, a great many times, passing up and down to the springs for water. (Continuing:) The character of the ground in that vicinity, at point 9, is high ground above the willows and in the open without any willows, and that point on the ground can be plainly seen from other portions of the claim.

Q. Did you ever prior to October, 1902, see any stakes on the [274] Grant claim in that vicinity?

A. No.

Cross-examination by Mr. SCHOFIELD.

The first time I passed over the claim I didn't examine it specially for stakes at that point, but I passed within a few feet of where they are now standing. I first examined the stakes at that point on the 24th of September this year. That was not the first time that I saw them. The first time I saw

(Testimony of Ethel Luella Howard.)

the stakes at that point was in the latter part of October, 1902, when I had charge of the property.

Q. The stakes were there in October, 1902, marking the northwest corner of the Carlson claim?

A. No, there wasn't any stakes there that I could see said what claim it was. (Continuing:) The first time I ever saw any stakes at that point, was the latter part of October, 1902. There were three stakes then. I think they were in the same mound. I did not see a stake at that point that was five or six feet northwesterly from the other stakes, at that time. As near as I remember there were two that I saw that I should think would be 2x4 lumber stakes, and one a little smaller, I should think about 2x3 lumber. I did not see any willow stakes there. I could not swear positively that there was not any. I did not observe a little hole there at that time, with a little mound thrown up. I didn't notice any if there was one. I have been over there a great many times for water, when I camped there different years since 1902. I have examined the stakes at point 9 this summer. There are two of them there now that I thought were the same that I saw in October, 1902. I remember seeing a stake there that I took to be a surveyor's stake, with some marking, but I couldn't tell [275] from the marking whose stakes they were, the name M. B. was cut in the stake, and that stake is still standing as I saw it in October, 1902. I did not ascertain in 1902 that that stake was the northeast corner of the Moonlight Bench No. 1. When I first went out there in September, 1899, I

(Testimony of Ethel Luella Howard.)

was looking for ground to locate. I examined part of that vicinity carefully as to whether or not the ground was open at that time. I thought the ground had all been staked in that vicinity from the number of stakes that I saw. I did not find any likely ground in that vicinity that was open for placer locations and I did not make any location there. It is about a third of a mile from the Grant claim to my claim on Cooper. Where I go to on Cooper Gulch is somewhat higher up than the Grant claim. My only object in going to the ground in the vicinity of Moonlight Springs in September, 1899, was to ascertain whether or not there was any open ground in that vicinity. I looked at a great many stakes in that vicinity at that time. I entered that vicinity from the lower tundra there and happened to go over near those springs, as I entered the willows I came down to that water there, and that stake of the Grant claim. I didn't go much distance above the willows there, either above or below, about the same distance. I didn't think much of the ground there above the willows or below.

I recall the break-off in the bank that runs across that country. I went past there looking for stakes. I went some distance above the thickest part of the willows. I noticed the open ground above the willows. I looked at all the stakes through that entire vicinity immediately south of that break or jump off. I examined all the stakes that I saw.

I first knew Mr. Kingsbury in 1898. I met him

(Testimony of Ethel Luella Howard.)

on the boat coming to Alaska. [276]

The first mining that I did here at Nome was on the beach.

I didn't know that part of the Howard and Doverspike dump fell back into the shaft. There were several dumps taken out by them that winter. I don't recall if some of those dumps fell back into the shafts after the breakup that spring, or not.

I examined the three stakes that I saw in September, 1899, on the Grant claim at the time I was out there. They were the only ones I saw at that time. [277]

Mr. GILMORE.—I next offer in evidence the deposition of Robert Lyng, taken on the 19th day of September, 1911. He did not leave for the outside as soon as he expected to, and he was subsequently examined October 25, 1911, recalled on that date.

Deposition of Robert Lyng.

My name is Robert Lyng. I am forty years old and have been lately in the mining business up here. My home is in Nome; I reside when outside in San Francisco; that is my legal residence, however. I intend to leave for the outside this fall on the next trip of the steamer "Senator," this coming week. I first came to Nome in the fall of 1898, in November, I think, somewhere about the 20th or 21st of November. I might miss it one day or two at that. I came here from Golovin Bay. After arriving here I made some mining location in the vicinity of Anvil mountain. I located what I called the Moonlight claim,

(Deposition of Robert Lyng.)

near Anvil mountain. It was several days after I arrived. I don't know just how many days now, several days after. Eric Lindbloom and R. T. Lyng were with me when I staked and located the claim. R. T. Lyng is my brother. He is still living. Mr. Lindbloom is one of the organizers of the Pioneer Mining Co. There was no one else in sight of us at that time in that vicinity, as far as I can remember. I cannot recall the exact date now, it was around the last days of November, 1898. The Moonlight claim covered what is called the Moonlight Springs out there. That is, I staked to the upper end of the claim above the springs and staked down so as to take in the springs or the biggest part of them, at least, and down along the stream. Down along what is called Moonlight creek. Mr. Lindbloom staked a placer claim the same day. He staked the claim just [278] below mine and he called it No. 2 Below on Moonlight. I called my claim the Moonlight claim. Lindbloom's claim adjoined mine on the lower end, that is, on the downstream. That is the southwest end. I have not been out in that vicinity recently. The last time I was out there was a good many years ago. I have not been out there, that is I have not stopped in that vicinity for a good many years. I have been going across there on the train but never stopped there in six or seven years. I know where the Moonlight Water Company gets its supply of water, where its intake is, it is from the Moonlight Springs. The springs where the Moonlight Water Company gets its water

(Deposition of Robert Lyng.)

is on the claim that I located in November, 1898. My claim as I located it, covered a large part of that spring.

Q. Where was your upper end, or east end of your claim with reference to those springs where the Moonlight Company now gets its water?

A. It was above the springs, that is, it was to the east of the springs, to the northeast, I guess, it would be.

Q. How did you mark your boundaries at that time, in November, 1898?

A. I put up four corner stakes and center stake at the upper end and center stake at the lower end. (Continuing:) I put the name of the claim and date of location and my name on the stakes that identified the claim. I called the claim the Moonlight claim, and my name was given as locator. Also the date of the location. The date given was the date that we located the claim in November. The monuments and stakes that we erected at that time were plainly visible in that locality. The stakes were driven in the ground and mounds built up around the base of the stakes so as to hold them up. We could not [279] drive them in very far because the ground was frozen. We had a pick and shovel to do that with, but could not drive them in as far as we would have done, so piled up little mounds at the base of the stakes to hold them up. The initial stake was at the upper center end, that would be the east end center, the end towards Anvil mountain. The initial stake was a willow stake and marked as I have said

(Deposition of Robert Lyng.)

already with location notice. I mounded that monument up with sod mound, cut the sod and threw it up around the stake. I have not been to that stake in recent years. As near as I can recall it is seven or eight years, I guess, at least since I have been there. I prospected on this claim. I prospected a little before I located it. I discovered gold within the boundaries of the claim as marked by me at that time. I found fine gold and found sufficient indications of gold at that time to warrant me in holding the claim and further develop it.

I know a man by the name of Andrew Jensen; that is, I know a man by the name of Jensen. I am not sure whether his name was Andrew or not. He had a claim near mine. I met him after I located there, several months. I know a claim out there called the McKay Bench, also called No. 6 Good Luck. That claim was located close to the Moonlight claim. It was on the north side or west side, I suppose, it would be. It would be between my claim and Anvil Creek. I knew a man by the name of W. N. Grant. I got acquainted with him during the winter of 1898 and 9. I knew him in the fall of 1898 down at Golovin Bay, that was before I located my Moonlight claim.

Q. Do you know whether or not he had a claim, or staked a claim out in the vicinity of yours that winter? A. Yes, he did. [280]

Q. Where was his claim with reference to yours?

A. East of mine.

Q. Do you know where his initial stake was?

A. Yes, sir.

Q. Where was it with reference to yours?

(Deposition of Robert Lyng.)

A. It was identical with mine.

Q. In the same mound, the mound that you had erected? A. Yes.

Q. And what character of a stake did he have at that point at his initial stake.

A. He had the same kind of a stake, willow. (Continuing:) I never examined it closely and never looked for any marks on it. I don't know of my own knowledge whether there was any marks on it or not. I was next on my Moonlight claim after I made my location in November, the following spring. I think it was in the month of May. It may have been June before I went out there. It was either May or June. I don't recall that I observed any notice of any kind or character on the stakes in the mound that I had erected.

Mr. GILMORE.—I offer in evidence a certified copy of the location notice of Bob Lyng's Moonlight claim, it being the claim that our Grant claim ties to; also the filing marks on it showing the date of record in the recording office.

The COURT.—It may be received in evidence, with the filing marks, and marked Defendants' Exhibit 29; which said exhibit is as follows: [281]

Defendants' Exhibit No. 29.

NOTICE OF PLACER LOCATION.

Notice is hereby given that the undersigned, having complied with the Mining Laws of the United States of America, and the local laws and customs of the Territory of Alaska and of the Cape Nome Mining District, having this 28th day of November, 1898,

located and do hereby locate and claim all of ground within the boundary hereinafter described, for placer mining purposes, together with all water rights, timber rights, rights of way and all other rights and privileges thereunto pertaining.

This claim is located on Moonlight Creek in the Cape Nome Mining District, and its boundaries are particularly described as follows, to-wit:

Commencing at the initial stake monument, whereon this notice is posted; thence south 330 feet to a stake monument being the southwest corner of the claim; thence east 1320 feet to a stake monument being the southeast corner of the claim; thence north 660 feet to a stake monument being the northeast corner of the claim; thence west 1320 feet to a stake monument being the northwest corner of the claim; thence south 330 feet to the initial stake monument or place of beginning.

This claim shall be known as the MOONLIGHT.

Located by:

ROBT. LYG.

Witnessed by:

ERIC O. LINDBLOM.

R. T. LYG.

Filed for record 9:00 A. M., December 5, 1898.

P. H. ANDERSON,

Deputy Recorder.

(Recorded Vol. 1, page 128.) [282]

Mr. GILMORE.—I also offer certified copy of location certificate of No. 6 Bench Anvil, or McKay Bench, referred to by this witness as No. 6 Below Good Luck; also the filing marks showing the record.

The COURT.—It may be received in evidence with

(Deposition of Robert Lyng.)

the filing marks, and marked Defendants' Exhibit 30; which said exhibit is as follows:

Defendants' Exhibit No. 30.

Anvil Creek, Jan. 2nd, 1899, Cape Nome Min. Dist.

BENCH CLAIM NO. 6.

I the undersigned Claim 660 feet from this stake northerly running parallel with claim No. 1 below southern side of Anvil Creek thence easterly 1320 feet thence southerly to Moonlight Claim thence along Moonlight Claim to stake No. 2 thence westerly to point of beginning.

ANDREW JENSEN,
Locator.

Witnesses:

OTTO SCHUELER.

E. L. SPANGGARD.

Filed for record 1:15 P. M., Jan. 17th, 1899.

G. W. PRICE,
Dept.

(Recorded Vol. 3, page 64.)

(Witness continuing:) In May or June, 1899, I went out to my southeast corner stake and examined that point. I don't recall whether I observed any other stake there at that time than my own, or not. I had a mound at that point around my stake. [283]

Q. Where did you see Mr. Grant after you made your location? A. I saw him several places.

Q. State whether or not you ever saw him on the claim or in the vicinity of Moonlight claim.

A. I have.

(Deposition of Robert Lyng.)

Q. State whether or not you were ever on his claim, or what he claimed to be his claim, at that time.

A. I was.

Q. And where did his claim lie with reference to yours at that time?

A. It was—it extended from my upper end in an easterly or northeasterly direction. (Continuing:) I was out on the claim several times during the summer of 1899. I can't say that I made an examination of the ground, stakes and monuments in that vicinity only my own claim. My best recollection is that Mr. Grant and I were on my claim and his claim in that vicinity during the summer of 1899.

Q. How well were you acquainted with Jensen—were you on speaking terms? A. I was.

Q. Did you ever see him on his claim out there?

A. I did.

Q. Where did you see him?

A. He was camped and at work on his own claim adjoining the Moonlight.

Q. What part of that No. 6 Good Luck do you remember Mr. Jensen had his camp on?

A. I don't recollect just what part that was, it was on the part up towards Anvil Mountain, I think.
[284]

Q. That would be the upper end of his claim?

A. I think so.

Q. About what distance from the springs was he camped? A. Not very far.

Q. What was he doing, if anything, there?

A. Prospecting.

(Deposition of Robert Lyng.)

Q. Did you hold any conversation with him at that time with reference to the ground in that vicinity?

A. Yes, I did.

Q. Was he out there at the time you and Mr. Grant were there in the summer of 1899? A. Yes.

Q. Do you remember whether or not he was on his claim the day that you and Grant were there?

A. Yes, I think he was camped up there.

Q. Now, do you know of a claim called No. 1 Bench Moonlight, did you ever hear of such a claim?

A. Yes, I think I have.

Q. When did you first hear of that claim, Bob?

A. I don't know, it might be several years since.

Q. Did you know anything about it in 1899?

A. No, I did not.

Q. Did you ever see any stakes or monuments of any kind or character indicating where that claim was? A. I did not.

Q. At any time in your life?

A. Not that I can recall.

Q. Do you know anything of your own knowledge, Bob, about where that claim was located, if such a claim was located or marked on the ground?

A. No, I don't. [285]

(Witness continuing:) When I was out there in May or June, 1899, I visited all my stakes that I put up in November, 1899. I found my stakes standing as far as I can now remember. I didn't look for any other stakes than my own and I don't recall having seen any other stakes in May or June, 1899. The only claim in that vicinity that conflicted in any

(Deposition of Robert Lyng.)

way with my Moonlight springs claim was what is called No. 6 Good Luck, the one that Jensen was camped on in the summer of 1899. He claimed that the northeast corner of my claim had been moved over on his ground. He said that the northeast corner of my Moonlight claim had been moved over onto his No. 6 Good Luck.

Q. Was there any other claim in that vicinity that you know of that conflicted with your location, your Moonlight location?

A. None that I know of; no. (Continuing:) I don't remember when I parted with my title to the Moonlight claim, to my best recollection it was either in 1901 or 2. I sold out to the Pioneer Mining Company.

Q. Now, from the time that you located in 1899, up to 1901 or 2, whatever time you sold to the Pioneer Mining Company, did anyone ever make any claim of any kind or character to your claim or any portion other than this claim made by Jensen to the overlap of No. 6 Good Luck?

Mr. COCHRAN.—Objected to as wholly irrelevant and immaterial.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

Mr. GILMORE.—I offer to show by the answer of the witness that he answered in substance that [286] no one made any claim whatever to it, thereby including the Pioneer Mining Company or any of its officials or its predecessors.

(Deposition of Robert Lyng.)

Mr. COCHRAN.—Objected to as wholly irrelevant and immaterial.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

Q. Did anyone ever assert that they had a claim conflicting with yours up to the time you sold?

Mr. COCHRAN.—Objected to as being wholly irrelevant and immaterial.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

Mr. GILMORE.—I offer to prove by the witness' answer in substance that no one made any claim to his knowledge, of the ground, including the plaintiff and its predecessors.

Mr. COCHRAN.—We object to it on the ground that it is wholly irrelevant and immaterial.

The COURT.—The objection is sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

Q. Did anyone make the assertion to you that they conflicted with you in any way?

Mr. COCHRAN.—Objected to as wholly irrelevant and immaterial.

The COURT.—Objection sustained and exception allowed. [287]

Mr. GILMORE.—We offer to show that the witness in answer stated in substance that no one ever did, thereby including the plaintiff and its predecessors.

(Deposition of Robert Lyng.)

Mr. COCHRAN.—I object to the offer on the ground that it is wholly irrelevant and immaterial.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

Q. Mr. Lyng, I hand you here a map, being a survey of a portion of the Moonlight claim and the Grant claim, made by Arthur Gibson, on the 30th day of September, 1902. Just please examine it a minute. I direct your attention to the point on the map marked Stake 1 on the easterly end of what is called the Moonlight claim. Please state if that was your initial stake, as erected by you in November, 1898; please indicate about where the springs would be on the claim, as shown on the map?

A. It would be about here.

Q. Will you please draw a line across where the springs would be on the map, this being east up here and this being west according to the map?

A. Well, that would come in like this (indicating), something like this here; it may be a little further down, possibly.

Q. Now, so as to get it in the record, will you mark that line X in the middle of the line, and what is your recollection Bob of the distance from the springs to the initial stake, at the time you marked it on the ground? [288]

A. From my initial stake to the springs?

Q. Yes, your best recollection now of the distance it would be?

A. It would be possibly 150 feet. (Continuing:)

(Deposition of Robert Lyng.)

I placed three stakes at the east end of my claim in 1898 when I staked it, one stake at each corner and one center stake.

Q. Now, I direct your attention here to the Grant claim as shown on the map by the surveyor, at the point marked stake 2 and stake 5, and ask you to state, Mr. Lyng, whether or not at the time you staked the Moonlight claim in November, 1898, you ever staked or marked the east end of your claim running from your initial stake to point 5 and back to the point which I will mark "Y," when marking the end of your claim?

Mr. COCHRAN.—We object to that on the ground that there is absolutely no evidence upon which to base such a question.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

Q. Did you ever incorporate the ground, at the time you marked the ground in 1898 from the points 1-5 and Y in your claim?

Mr. COCHRAN.—Objected to on the same ground as stated in the objection to the preceding question.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed. [289]

Mr. GILMORE.—I ask the Court to have the map attached to Mr. Lyng's deposition marked for identification.

The COURT.—It may be marked Defendants' Exhibit 31 for Identification.

(Deposition of Robert Lyng.)

Q. Did you ever move or change the position of your initial stake from the time you placed it there in November, 1898, at any time when you owned the claim?

A. I did not. (Continuing:) I never moved any of my stakes. So far as I know the stakes were in their proper position when I sold to the Pioneer Mining Company. I do not recall the exact date when I sold. I did not employ Mr. Gibson to make this map. I do not think I was out on the ground at the time the Pioneer bought the ground. I do not recall whether or not I ever observed Mr. Grant working on his claim during 1899 nor do I recall whether or not I observed any work done by him. I have no interest whatever in the result of this lawsuit. I have no contingent payments and I have parted with my title to the Moonlight claim.

Cross-examination.

(By Mr. COCHRAN.)

I have been in the vicinity of the Moonlight claim, or on the Grant claim, before I located it. I could not swear that I had been within the boundaries of the claim before, but I possibly had because I was back and forth several times before I located the claim. I think I named Moonlight Creek on the day I located the Moonlight claim. I think I originated the name of Moonlight and also the name of the springs.

I tried to make my end lines straight when I located. [290] As far as I know, it was a straight line. There were more or less willows at that point

(Deposition of Robert Lyng.)

and it is up hill; in places the willows are too thick to get through and I might have got a little out of straight line in that way, but I tried to make the end lines as well as the side lines straight.

Q. Now, there is nothing up there to obstruct your view from one point to the other?

A. Yes, there was right there.

Q. What was it?

A. Well, there was willows and there was quite a bank up there, between the corner stake on the north and the center stake and the other corner stakes, so that the bank that is there, there is a drop off there and the center stake is up here (indicating), and I would be up on the opposite side of the bank, and I could, possibly, not see the stakes.

(Witness continuing:) As far as I recollect I put some mounds around the center end stakes the day I located the claim. I think we put the corner stakes in the next day, either the same day or the next day. There was only little patches of snow here and there on top of the ground and the top of the ground was frozen. The mounds were principally moss, and we had cut loose some frozen stuff. We had an ax and pick and shovel along. It did not take us very long, possibly an hour or an hour and a half; I should say an hour and a half. We cut the stakes right there and wrote out the location notice there on the ground. I believe we did some prospecting that day. I could not swear now whether I did or not on that day. I believe we had a pan with us. I am not sure whether we had or not. We prospected in the creek where

(Deposition of Robert Lyng.)

the spring is running, [291] where the water is running right near the springs where the gravels are exposed in several places. I am not positive whether I did any prospecting the first time I was there or not. I was on the ground a day or two later; my brother was with me and possibly another man. I am not sure whether anyone was with me besides my brother or not. I was on the trail traveling at that time. I wasn't living anywhere. Living wherever I stopped at night. I had a camp on Anvil Creek, on No. 7 Above Anvil.

Q. And you were on the trail traveling back and forth between there and Nome?

A. I thought you meant the next time I went on the Moonlight claim. When I made my location was when I was on the claim, I broke camp that day and went back to Golovin.

(Witness continuing:) I had sent part of my equipment back already and I took the rest along. I was traveling with reindeer belonging to my brother's outfit. I had sent most of my outfit back with a dog team, I run out of dog feed and had to send the team back and I don't recollect whether I sent my tent or not. As far as I remember the chances are we left our tools and everything packed up at that time, at Anvil or the Beach. We stopped down at the Beach, I don't know whether we stayed over night or not. I don't recollect that we were to do any prospecting along the way. We passed through the Moonlight claim. We stopped and did some work there.

Q. Now, what did the work consist of Bob?

(Deposition of Robert Lyng.)

A. That answer may not have been correct. I would state that we stopped there and I think we staked another claim on that day, and possibly put up the corner stakes, I am not sure whether we did or not. We staked a claim [292] called the Lindblom claim south of the Moonlight claim. I don't recollect whether we did any work on the Moonlight claim or not that day. We were headed for Golovin. We went to several other places before we went there, for instance we staked some more claims in this country. We staked six or eight more claims. I don't think I returned to Nome until May or June, 1899. I did not leave anyone in charge of the claim when I was gone, nor anyone to do any work for me. When I returned in May or June, 1899, I did some work on the claim and discovered gold up in the corner where the springs are. My initial stake was the upper end of Moonlight claim, and the claim extended down the stream. My main object was not to include the springs. We included the springs. There was water running in there, I think, that was within the claim, water coming in from both sides, a little. We staked down the stream from the initial stake. My intention was to stake 1320 feet downstream from the initial stake and 330 feet on each side. As far as I know, we staked off the claim 660 feet by 1320 feet in form of a parallelogram; that was my intention. I had staked quite a number of claims prior to staking the Moonlight, or assisted in staking quite a number of claims, and stepped them off generally. I never tried to be reasonably ac-

(Deposition of Robert Lyng.)

curate, but I tried to be as near as I could, in stepping off the claims. I located this claim as near as I could in the form of a parallelogram, 660 feet wide by 1320 feet long, that was my intention, and I think I stepped it off. In stepping off I counted it off. I tried to step three feet to a pace. I never taped the ground off at that time. I don't recollect whether we set the initial stake or put up the corners first I tried to pace 330 feet each way from the initial stake. It would take 110 paces for 330 feet. [293] I do not think I was present when Grant made a location in that vicinity. I do not know whether I was in Golovin or not at that time. I made several trips out to St. Michaels and two or three up here to Nome. I don't think I saw him make any location up there.

Q. Now, you say Grant's initial stake was identical with your initial stake? A. Yes.

Q. You mean by that that you saw his stake there in the mound where your initial stake was?

A. Yes.

Q. I believe you said you did not recollect of ever seeing any markings upon that stake.

A. No, I never looked for any.

Q. Now, someone told you that was Grant's stake did they, or did you just conclude that was Grant's stake because Grant had a claim there?

A. Grant told me himself. (Continuing:) I don't recall that I ever observed any other stakes at my upper corner.

Q. And did the Grant claim overlap your claim?

(Deposition of Robert Lyng.)

A. No.

Q. How do you know if you never saw his corner stake?

A. Well, I am answering to the best of my knowledge.

Q. Then, you don't know whether it did or not, Bob?

A. So far as I know it didn't, I know his center stake was not inside of my lines. (Continuing:) I am not sure whether or not he claimed his corners where mine were or not. I don't think I know a man by the name of Nelson who made a location near Moonlight claim. I may know him. I don't know whether I do or not. [294]

Q. Do you know a claim called the Nelson Bench claim? A. No.

Q. Are you familiar with the ground lying east of the Moonlight claim?

A. Familiar with the ground but not the location. (Continuing:) I never heard of the Napa claim or Depue claim until I saw it on this map. I don't know what they call the claim that lies between the Napa and the Moonlight. I know a man by the name of Spanggard. I think I knew him in the winter of 1898 and 9 in Nome. I did not know he located a claim in that vicinity called the Depue or Napa Bench. Never heard of it. I don't recollect that I ever saw him up in that vicinity. I know Elizabeth Carlson, now Mrs. Jorgensen. I have known her up there for several years. I never saw her in the vicinity of the ground lying immediately easterly of the

(Deposition of Robert Lyng.)

Moonlight claim. I do not know a great deal about the locations in the vicinity of the Moonlight claim after I made my location. I did not examine the stakes and I was not interested in the ground lying outside of the Moonlight claim to the easterly. I cannot say I ever paid any attention to the stakes except those in my own vicinity. I don't know how many claims might have been located between Moonlight claim and the Napa. I only know where the upper end stakes or northerly end stakes of the Grant claim are in a general way. I can't say whether I have been to them or not, only in a general way. I know the general direction of his claim as he told me he had located it. I could not point out the spot where the stakes were located. [295]

Redirect Examination.

(By Mr. GILMORE.)

Q. Where did Grant tell you the claim was located?

A. He told me it was located from my upper end line, extending the other way.

Q. By other way what do you mean?

A. That would be in an easterly direction.

Q. And then, if your claim is correctly marked on this map, does the Grant claim there show about where he indicated to you it was? A. It does.

Q. Where were you when you had the conversation with him with reference to his claim? I mean which claim were you on, yours or his? A. I don't know.

Q. State whether or not at that time he indicated by pointing, the direction of his claim, which way it lay. A. Yes, sir.

(Deposition of Robert Lyng.)

Q. Where did he indicate his claim from with reference to yours?

A. Extending to the east from mine. (Continuing:) We then were in sight of his claim at the time he indicated. We were either on his ground or on Jensen's No. 6 Good Luck.

I am acquainted with Jafet Lindeberg. I was on the Moonlight claim with him in 1899 during the summer. I think it was in July or August, 1899, that we were there. I was there prospecting with him. We prospected near the Moonlight springs. We found some gold then. I found it on several occasions.

My initial stake at the time I placed it on the ground with reference to the Moonlight springs, was on higher ground than the springs. It was on lower ground than the northeast corner. [296] It was uphill from the initial stake going towards the northeast corner of my claim; as near as I remember, it was fairly level or just slightly uphill for a short distance from the initial stake and then there was a pretty steep bank several feet high, possibly eight or ten feet high, and then it was more level again from there, that is slightly uphill. The abrupt rise that I spoke of is not so very far, as near as I can remember it is about twenty or twenty-five feet. I indicate by letter "O" on the map where the hill is. From the initial stake to the southeast corner it was going downhill; there was more or less willows there at that time, pretty thick bunches of willows.

Q. Now, Mr. Lyng, you say you stepped off the

(Deposition of Robert Lyng.)

claim from the upper end down what you supposed was 1320 feet in length? A. Yes.

Q. Do you know whether or not you got 1320 feet in length?

A. No, I don't. (Continuing:) I never ascertained afterwards whether or not it was a full length claim. Lindblom's claim was staked below mine. His initial stake, that would be the upper center end stake, was identical with my lower center stake. Moonlight claim ran through his claim as well as mine. There was a surface stream running there then, before the ground was disturbed by mining. I don't know where Moonlight Creek emptied into.

In answering Mr. Cochran's questions when I said I did not know of a claim lying between the Moonlight and the Napa, I did not refer to the Grant claim.
[297]

Recross-examination.

I sold my Moonlight claim to the Pioneer Mining Company and got a thousand dollars for my interest, which was one-third. I know Mr. McCumber, one of the defendants in this case, by sight. I don't know that I designated my lines as shown on the map or not. My judgment is, if I did, I did not get a very straight line. I may have placed a stake wrong. I did not step off all the lines. There were three of us and one would step one way and one another. I am familiar with the lines of the Moonlight claim in a general way. Been out there a number of times. I don't recollect whether I ever observed that there was any discrepancy in my northerly end line or not.

(Deposition of Robert Lyng.)

I had a talk with Jensen about the overlapping of his No. 6 Good Luck. All the talk we had about that was Jensen told me that one of his stakes was over on his ground. When we had the talk we were either on Jensen's claim or on the Moonlight claim. Jensen showed me the stake. I believe it was on his No. 6 Good Luck. I do not know where the corner of the Good Luck is. I don't know whether I put my stake at the point marked XX on the map or not. I think my stake was marked. According to the map the northeast corner is only 200 feet from the initial stake that would make it not a full-sized claim; it would be a short claim. I am five feet eight or nine inches high. I think I can pace three feet. I don't know whether I paced that line off or somebody else did. I paced some of the lines. The other two paced off some of the others. The willow stakes look pretty much all alike.

Q. Did you or did you not know your stakes?

A. I think I did.

Q. But you don't know the corner stakes that Jensen showed you on the Good Luck claim?

A. I think I do. [298]

Q. Was it your corner stake? A. I think so.

Redirect Examination.

(By Mr. GILMORE.)

I know it was Davidson that surveyed the Moonlight Springs in 1900 for the Moonlight Springs Water Company. We did not have a tape-line with us when we measured the claim. We used the same system in pacing the end that we did at the side, and

(Deposition of Robert Lyng.)

if we got the side line short we also got the end line short. I did not do all the stepping; there would be one of us locating the corner, two men would be stepping from the center, one in each direction, so that in that way we might come considerable off the straight line.

Q. Now, did your claim as staked by you in November, 1898, include all the Moonlight Springs, the entire springs oozing from the ground?

A. No, I don't think it took in all the water in this part (pointing to points XX and 5).

Q. And state whether or not it included the main Moonlight spring, where the waterworks now get their water. A. It did.

Recross-examination.

(By Mr. COCHRAN.)

Jensen informed me that what he called my north-east corner had been moved over onto his No. 6 Good Luck, and showed it to me. I don't know that I identified the stake as my own stake. I identified it as the Moonlight claim stake.

Q. It was up toward the point marked 5, wasn't it? A. It was up in that direction or point XX.

Q. How far was it from the Jensen claim?

A. I don't recollect that. [299]

Q. About how far, two hundred feet?

A. I don't know whether it was two hundred feet or more or less.

Q. You know it was on the Jensen claim though?

A. Yes.

(Deposition of Robert Lyng.)

Re-redirect Examination.

(By Mr. GILMORE.)

Q. Now, the stake that you said Jensen pointed out to you, who put that stake at that place?

A. I don't know.

Q. You don't know whether Davidson, the surveyor, put it there or not?

A. I don't know. (Continuing:) I never talked to Mr. Davidson about it. I never gave Mr. Davidson or anyone else permission to move my stake. They did not move my stake to my knowledge. I could not swear that the stake Jensen pointed out to me had been moved at all or not. [300]

**[Testimony of Arthur Gibson, for Defendants
(Recalled).]**

ARTHUR GIBSON, recalled by defendants.

Direct Examination by Mr. GILMORE.

Q. Please examine the exhibit that I hand you, Mr. Gibson, and state if you know what it is.

A. I do.

Q. Who made the blue-print?

A. I did. (Continuing:) It was made from surveys on the ground by me; it was partially made from surveys on the ground by me from survey notes made by me.

Q. Is that a copy of the map furnished to Mr. Kingsbury of the survey of the Grant claim on September 30, 1902? A. Yes.

Mr. COCHRAN.—I would like to cross-examine him.

The COURT.—Proceed.

(Testimony of Arthur Gibson.)

Q. Mr. Gibson, is the line delineated to point W on that map a corner of the Lyng claim from a survey made by you? A. No.

Redirect Examination.

(By Mr. GILMORE.)

Q. What do you know of it, where did you get your information?

A. Mr. Lyng, while Mr. Lyng was in the ground.

Q. And you surveyed that point on that map for the owner of No. 6 Good Luck, didn't you?

Mr. COCHRAN.—Objected to as leading.

Mr. GILMORE.—He is an adverse witness.

The COURT.—There is nothing to show that he is an adverse witness.

Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed. [301]

Mr. GILMORE.—I offer the map in evidence, if the Court please.

The COURT.—It may be received for illustrative purposes and marked Defendants' Exhibit 31 for illustration. [302]

Defendant's Exhibit "31"

Exhibit A of deposition

10 N 35 57 30 E 1
U.S.M.M. No. 1
To SE (or Discover)
Anvil Peak 130

2

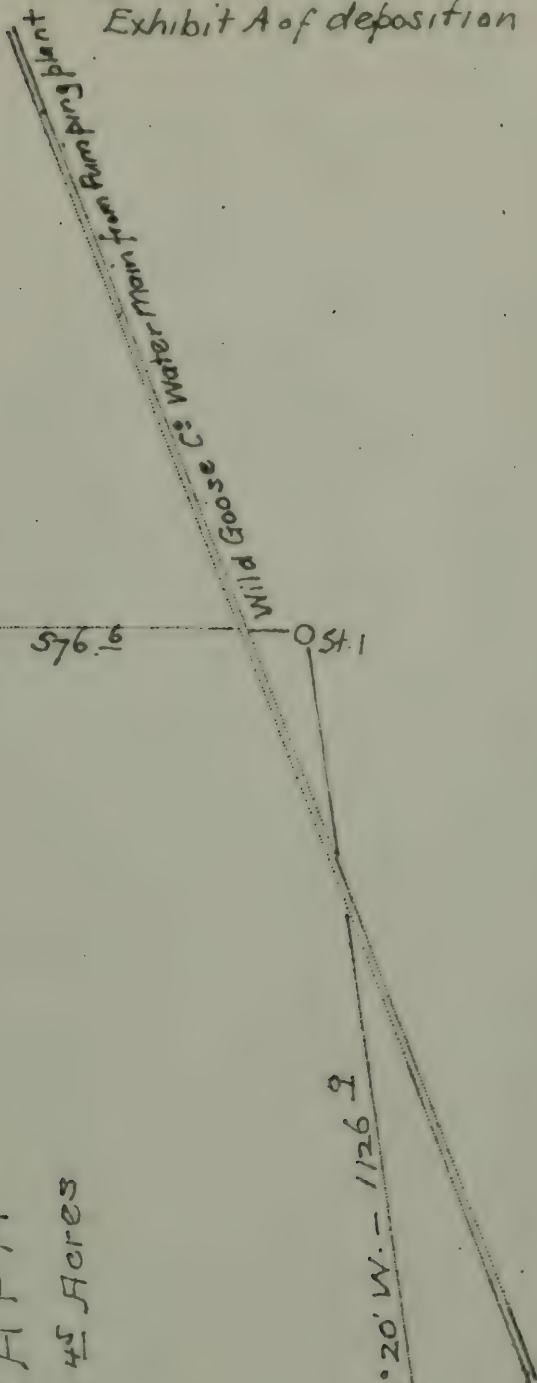
S 50° 27' E 576.6

0.51.1

NAPA

15 45 Acres

S. 32° 20' W. - 1126 2



Defendants Exhibit 31
Exhibit A of deposition



Mr. GILMORE.—I want to inform the Court that at the time Mr. Lyng was first examined he was to leave on the “Senator,” but for some reason he did not go away for a week or two and he went out to the claim, and I recapped him and retook his deposition.

The COURT.—The deposition may be read.

[Deposition of Robert Lyng.]

Direct Examination.

(By Mr. GILMORE.)

Q. Mr. Lyng, you didn't go away from the District of Alaska as soon as you expected? A. No.

Q. For what reason?

A. Well, a few matters that were not wound up that I stayed over for. (Continuing:) It is my intention to leave within the next few days for the outside on the steamer “Senator.”

Q. Since the taking of your deposition, state whether or not you have visited the vicinity of the ground in controversy in this action.

A. I have.

Q. At whose request? A. At Mr. Gilmore's.

Q. And when was your visit to the ground, can you give approximately the dates?

A. I could not give the date, but it was some days after my deposition was taken, possibly a week later.

Q. Now, at the time you visited the ground, state whether or [304] not you examined any mounds or stakes in the vicinity of Moonlight Springs.

A. I did. (Continuing:) I examined the initial stake of the Moonlight claim and the corner down towards Little Creek. I guess it would be the

(Deposition of Robert Lyng.)

southeast corner of the Moonlight claim, the claim that I originally staked.

Q. Now, Mr. Lyng, from the examination that you made of the ground in that vicinity, state whether or not the southeast corner of the Lyng claim and the initial stake of the Lyng claim, as found by you on the ground at the time you made your investigation recently, were in the same place as staked by you at the time you located the claim in 1898.

A. Yes, sir; they were.

Q. And where was the initial stake or mound found by you on your inspection with reference to where you put that stake and mound at the time you located your claim in 1898?

A. It was in the same place.

Q. And at that time did you observe the Moonlight Springs, what is known as the dam or Moonlight Springs on the ground?

A. Yes, I did. (Continuing:) I don't remember how many years have elapsed since I was there before, it must be seven or possibly eight years. I wasn't able to identify my northeast corner stake towards Anvil mountain. I saw a stake there supposed to be the northeast corner. I did not have any trouble in locating my initial stake or my southeast corner. I don't recall now that I paid any attention, any particular attention, to the Grant stake in 1899 outside of the initial stake. I [305] know that the Grant initial stake was identical with mine.

Q. Referring to the southeast corner towards Little Creek, state whether or not you ever observed

(Deposition of Robert Lyng.)

any stakes of the Grant claim at that point.

A. I did.

Q. And what character of stake was it?

A. A willow stake.

Cross-examination.

(By Mr. COCHRAN.)

I don't remember the exact date that I located the Moonlight claim, but it was in the last days of November or first days of December, 1898. I was on the ground again in the spring of 1899. I am certain that gold had been discovered on the claim. I am not positive about what time I made the discovery. I am not positive whether I made the discovery when we made our location or when I returned in 1899.

Q. State whether or not you did make a discovery of gold the day before or the day after you made your location.

A. A discovery of gold had been made before I made the location and I feel certain I prospected on the claim and found gold before I returned to Golovin.

Q. State whether or not you knew of that discovery before you located it. A. I did.

Q. And that was within the boundaries of the ground you located? A. Yes, it was.

Q. You knew this at the time you located?

A. Yes, sir. [306]

Q. You were not there when the discovery was made, were you, Bob?

A. Not this discovery that I refer to now.

Q. And that discovery, somebody told you they

(Deposition of Robert Lyng.)

had made a discovery of gold on the claim?

A. Yes.

Mr. GILMORE.—And who told you?

A. Lindblom.

Q. Whereabouts did he indicate to you he had found gold? A. Right below the springs.

Q. And do you know it to be a fact, of your own knowledge, that there is gold in large quantities where he indicated to you?

A. Yes, I have since found gold there myself.

Q. And state whether or not the ground has been mined and large quantities of gold extracted at the point where he indicated.

A. Yes, I have been told so.

Recross-examination.

(By Mr. COCHRAN.)

Q. Now, you say Mr. Lindblom told you that he had made a discovery of gold on the Moonlight claim?

A. Yes.

Q. And you only had his word for it?

A. At the time I made the location, yes. (Witness continuing:) I am not absolutely certain whether I panned the day following my location or not; I could not say. When I was out on the claim a few days ago I was unable to identify where my northeast corner was. I was at the southeast corner. [307] I don't know that I saw the stake that I put there originally. I do not know that I recognized any of the original stakes.

Q. Then, how do you recognize that as being the identical place where you put your southeast corner?

(Deposition of Robert Lyng.)

A. Well, just from where it should be, as far as I recollect.

Q. You might be mistaken about that, however?

A. Well, I don't think so. (Continuing:) It is swamp ground in there; there were no natural marks around it. The ground is practically the same for several hundred feet. I did not assume that to be the corner, because I saw the stakes; I thought that was just where it ought to be.

Q. You never saw any Grant stake except the one at your initial stake?

A. I would not say I never saw any others; I may have seen them all. I am not positive that I did. (Continuing:) Grant's initial stake was a willow stake. I don't recollect whether I ever saw a willow stake at the northeast corner of my Moonlight claim or not.

Redirect Examination.

(By Mr. GILMORE.)

Q. State whether or not you saw your upper corners of your claim in the year 1900. A. I did.

Q. Did you see the same corners in 1901?

A. I am not positive whether I did or not. (Continuing:) The upper corners of my claim were plainly marked on the ground and easily found, in 1900. I had no trouble in finding the same places where the corners stood in 1900 when I was on the ground recently. [308]

Q. State whether or not the southeast corner of your claim towards Little Creek was that corner that you recently identified as being in the same position

(Deposition of Robert Lyng.)

as the original corner of the claim as marked by Mr. Grant or indicated by Mr. Grant to you in 1899.

A. It was. [309]

Testimony of Francis M. Warsing, for Defendants.

FRANCIS M. WARSING, a witness on behalf of defendants, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GILMORE.)

My name is Francis M. Warsing. I am an engineer and miner. I have mined in the Nome District near Moonlight and on Dry Creek. I know the Grant claim. I got acquainted with that claim in March, 1902. I was working on the Gaffney Fraction. The Gaffney Fraction is shown on Defendants' Exhibit No. 9, the blue-print attached to the wall. Also No. 2 East Fork. The Gaffney Fraction was adjoining placer claim No. 2 East Fork on Moonlight. I was working about four hundred feet, I should say, from the southwest corner of the Grant claim. I was living at that time a few hundred feet from the initial stake of the Gaffney Fraction. It would be near point represented by the letter "H" on Defendants' Exhibit 9. I was living in a board cabin 9x15 in size. I was in the employ of Captain John T. Hill at that time. I was his foreman. Billy Brittner, Van and Wagner were the men that were working under me. I went to work out there on the Gaffney Fraction in the early part of February, 1902, and continued to work in that place, in that vicinity until the 3d day of June, 1903. I continued to work

(Testimony of Francis M. Warsing.)

in that vicinity on other claims after that until the fall of 1904, the middle of September. I was there continuously during that time except during the winter of 1903. In 1902 I was familiar with the westerly boundaries of the Grant claim. I knew, generally, where the Bob Lyng or Moonlight Springs claim was. The west end of the Grant claim and the east end of the Lyng claim joined. The [310] Grant claim was northeasterly from the springs. At that time I was over to the mounds and monuments of the Grant claim. During this trial I heard the evidence of witness that the corners were marked by mounds and stakes with painted figures. While I was out there I did not observe so much the figures, but the stakes and mounds I did.

I know a man named C. T. Howard. I know P. D. Winter and George Crawford. P. D. Winter was living in February, 1902, in the vicinity of No. 1 Above on Little Creek, about fifteen hundred feet from the Grant claim. I think George Crawford lived with him. In the summer of 1902 I observed Mr. Winter and Mr. Crawford working within the Grant claim boundaries. They were working on the westerly end. They were running an open cut. I know where the ground in controversy is, being the westerly end of the Grant claim. Winter and Crawford in 1902 were working within the ground in controversy. They worked there along the latter part of the summer, in August, I think. I also know George Doverspike, Fred Williams, Billy Schue and Mike O'Leary. In the fall of 1902 I observed all of

(Testimony of Francis M. Warsing.)

those gentlemen with C. T. Howard, working on the Grant claim. I think it was in September, 1902. A short time after Crawford and Winter quit work. They went to work in the southwesterly end of the Grant claim, within the ground in controversy. I mark approximately the place where they were at work, on Defendants' map, Exhibit 11, and mark the place with the figures "66" with a circle around it. Those boys at that time were living on No. 2 East Fork, Moonlight. I mark the place on Defendants' map, Exhibit 11, where their cabin stood, with the figures "67" and a circle around it. Their cabin or habitation was about three or four hundred feet from mine where I lived. I visited them frequently that winter and I was there [311] at the place where they were working and in their works. They were digging shafts. They worked on several shafts. They commenced in the fall of 1902 and worked continuously until May, 1903. They were hoisting gravel near the shaft. I was at the bottom of their shaft. I did not go in their stopes. They took out six dumps.

Q. And state to the Court approximately the size of the dumps as near as you can recall, if you can do so. A. About 310 or 312 ten pan buckets.

The COURT.—You said 300 10 or 12 pan buckets in each dump?

A. In each dump. (Continuing:) They did sluicing and actual mining in the spring of 1903. They quit work in the spring of 1903 because an injunction was filed against them. A portion of the dumps

(Testimony of Francis M. Warsing.)

were washed up, the balance remained. About five per cent of the dumps were washed up prior to the injunction that was served on them. The rest of the dumps were washed up in August, 1903, by Hopkins and Muther.

Q. State whether or not those dumps, that is, the portion that was unwashed or not sluiced up, remained in plain sight, open and notorious to any one passing over the ground, or around the ground, during the months of June and July, up to the time they were washed up.

Mr. COCHRAN.—Objected to as being a conclusion of law.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

(Witness continuing:) The dumps were visible. I know Mr. Hopkins and I know Mr. J. C. Muther and I also know Mr. W. H. Bard. I first saw Hopkins and Muther working on the Grant claim [312] in August, 1903. Mr. Hopkins worked there about ten days on the southwesterly end of it, near the same place where Howard and Doverspike had worked. When Hopkins quit work Muther and Bard continued. They worked a little north of where the dumps were taken out and still within the ground in controversy. I lived out there during the month of September and first week in October, 1903, and I was in plain sight, where I was working, of the most of the Grant claim. There was no one else other than Mr. Hopkins and Mr. Bard working within the

(Testimony of Francis M. Warsing.)

boundaries of the Grant claim at that time. If the Pioneer Mining Company had had any men digging in that portion of the claim near the point "S" on the map, in the latter part of September or first of October, I should have seen them from where I was, and I did not see anyone working there digging shafts or doing that character of work at that time. There was nobody else working there at that place on that part of the claim, at that time. Muther and Bard were working at that identical time, September and first part of October, 1903, within two hundred feet of the initial stake, or the point "S." Muther and Bard were living in the fall of 1903, just past the railroad. Mr. Hopkins did not have a cabin on the claim while he was sluicing. Muther and Bard lived in the month of September and October, 1903, on the Grant claim in cabins just above the railroad. On defendants' map, Exhibit 11, I indicate the place where the cabin was by the figures "68" with a circle around it. They lived there all the winter of 1903 and 4. In the winter of 1903 and 4 I was an engineer in the Golden Gate Hotel in Nome. Mr. Muther and Mr. Bard were sinking holes out there and prospecting on the Grant claim, and they extracted several small dumps. In the spring of 1904 they sluiced them up. In the summer of 1904 Muther and Hopkins worked the Grant claim. I [313] was running a gasoline engine for Roland Sutherland, near the Moonlight Springs. Sutherland was piping his water from the Moonlight Springs. Muther and Hopkins were working on the west end of the Grant

(Testimony of Francis M. Warsing.)

claim, about four hundred feet from the springs. Roland Sutherland represented the Caribou Mining Company.

In the summer of 1904 I had an option for a lease from Muther on the Grant claim. The option was for eight days. I did some work on the Grant claim prospecting. Sank four holes nineteen to twenty-four feet deep on the southwesterly part of the Grant claim, within the ground now in controversy. The cabins are not still on the ground at the point "68," as I have shown on the map. Mr. Hopkins was living in those cabins at the time. I did not take up my option. After I gave up my option I observed further work done on the Grant claim in the fall or winter of 1904 and spring of 1905. The operations were carried on by Oscar Margraf and John Rieck. After they quit work I couldn't say who carried the operations on. Rieck and Margraf started their work in the fall of 1904. I don't know how long they continued to work there. I don't know how many men were employed by Muther and Bard. While I was out there I visited their cabins during the time they were working. I used to walk over occasionally. I was there many times.

Q. Mr. Warsing, did you ever hear of a claim out in that vicinity called Bench No. 1 off Moonlight?

A. I did not.

Q. Do you know a man by the name of Andrew Jensen? A. No, sir.

Q. During all the time, from February, 1902, up until the spring of 1905, state whether or not you

(Testimony of Francis M. Warsing.)

ever heard or knew of any conflict between any other claim and the [314] Grant claim, the part of the Grant claim where this work was done.

A. No, sir, I did not.

Q. While you were working on the ground, Mr. Warsing, under your option from Mr. Muther, did any one molest you or interfere with you or complain that you were working on ground not belonging to the defendant?

Mr. COCHRAN.—Objected to as wholly irrelevant and immaterial.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

(Witness continuing:) I knew of a tunnel that was constructed on that portion of the claim. It was started in the fall of 1904 by Margraf and John Rieck. I was in the tunnel in the winter of 1904 and 5. They were in about seventy feet, I should judge, when I was there. The tunnel was on the southwesterly part of the Grant claim. It was bedrock work. It was on that part of the ground as shown on the big map, Defendants' Exhibit 11, at the point "C" and between figure 1 and figure "C" on Plaintiff's Exhibit "A." The general course of the tunnel was northeast. During all of the time that I was working in that vicinity, from February, 1902, until the spring of 1905, I did not see anybody else working in that vicinity other than the men that I have named and the laborers that worked for them.

(Testimony of Francis M. Warsing.)

I know a claim in that vicinity called the Jerome Fraction. It lay in a westerly direction from where I was working for Captain Hill on the Gaffney Fraction. I was not acquainted with the southerly boundaries of the Bob Lyng claim. I knew the west end line of what was called the Caribou or No. 2 East [315] Fork claim. The Jerome Fraction adjoined a portion of the west end of No. 2 East Fork on Moonlight. On Defendants' Exhibit 9, the blueprint, I can indicate the Jerome Fraction. It is marked in letters running from point A to T, to Y and W, and back to 8. I first knew that claim in the summer of 1902. I have no interest in the result of this lawsuit or any interest in the ground in controversy. During the time that Mr. Hopkins and Mr. Bard were sluicing the dumps, that were left by Howard and Doverspike in August, 1903, they used a small gasoline engine and pump. They had their gasoline engine and pump down near the Moonlight Springs.

Cross-examination.

(By Mr. COCHRAN.)

I was foreman for Captain Hill, prospecting and drifting on the westerly portion of the Gaffney Fraction. I started to work there the latter part of February or first of March, 1902, and continued to prospect until the 30th day of June, 1903. I quit work then for Captain Hill altogether and came to Nome. I went to work at the Golden Gate Hotel after that, and worked twenty days in the month of June. I don't recall just at this time what I did do

(Testimony of Francis M. Warsing.)

after that. I mined on St. Michaels creek in the early spring of 1904. After I quit work in the Golden Gate in June, 1903, I don't remember just now what I did do. I worked on part of the Congregational Church parsonage. After that I went to work at the Golden Gate. I helped to build the Golden Gate. I don't know whether I was in town during the winter of 1903, or not.

Q. Now, the fact of the matter is you don't know of your own knowledge whether or not Louis Stevenson, in the fall of 1903, was over in this portion of the Bench claim No. 1 on Moonlight and did any work?
[316]

A. I never saw them. (Continuing:) I couldn't tell you where I was in the month of September, 1903. I was not out there for Captain Hill in September, 1903. I have no idea at this time where I was in the month of September.

Q. You are mistaken about September, 1903, in saying that Louis Stevenson couldn't have had any men there?

A. I don't know anything about that in September, 1903. I never saw them there.

Q. You were not around there in September, 1903, were you? A. I think I was.

Q. You don't know whether you were out there in September, 1903, do you Frank?

A. I was out there with Billy Brittner.

Q. Just went out there and came back?

A. He owned a small fraction out there.

United States
Circuit Court of Appeals
For the Ninth Circuit.

Transcript of Record.
(*In Three Volumes.*)

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Appellants,

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VOLUME III.

(Pages 545 to 799, Inclusive.)

Upon Appeal from the United States District Court for
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the District of Alaska, Second Division.

(Testimony of Francis M. Warsing.)

Q. All right, you were out there with Billy Brittner, in September, 1903, near this ground, will you swear that you were? A. No, I will not.

Q. Will you swear that you were out there with Billy Brittner in the month of September, in the neighborhood of this ground on the fraction, in the month of October, I mean?

A. No, I would not, I might be mistaken. (Continuing:) I never saw Stevenson or any men for the Pioneer Mining Company working on this ground in September, 1903, that is all I can say. I am pretty familiar with the Grant claim. I did not know the Gadd brothers. I did not see them working on the ground in 1902 in the summer and fall. I was around the claim in the late summer of 1902. We started to work there early in [317] the fall of 1902. I did not see anybody working there in the fall of 1902 that I didn't know. It is possible that I might have seen them but I don't think so. I have heard of the Anvil Tundra Mining Co. I don't know Mr. Gadd, its manager.

I have no interest in the Grant claim. I did have occasion to watch that claim specially. Captain Hill was of that nature that he wanted to pry into everybody's business around. I was not inquisitive but I was paid for prying into everybody's business during the prospecting in that vicinity. There was no actual mining carried on at that time on the Grant claim because there never was anything found.

(Testimony of Francis M. Warsing.)

Redirect Examination.

(By Mr. GILMORE.)

By saying that nothing was ever found, I meant what you would call good pay in quantities. The going rate of wages at that time was \$3.00 a day and board. Board was worth \$1.50 per day. I would estimate the work done on the ground in controversy, between February, 1902, and the spring of 1905, estimating the labor of all men I saw working there at the going rate of wages to be about \$2500.00.

Mr. GILMORE.—I now offer in evidence a general power of attorney from the defendant Pacific Coal & Transportation Company to Captain West, bearing date the 7th day of July, 1903, executed by the corporation, with its corporate seal, duly acknowledged and certified.

The COURT.—It may be received in evidence and marked Defendants' Exhibit 32. [318]

Mr. GILMORE.—I now offer in evidence a certified copy of a written lease from the defendant Pacific Coal & Transportation Company, to W. A. Hopkins and John Belvail, bearing date the 2d day of September, 1903, of the Grant claim, covering the ground in controversy executed on his behalf by Captain West, attorney in fact.

The COURT.—It may be received in evidence and marked Defendants' Exhibit 33.

Mr. GILMORE.—We now offer in evidence a certified copy of an agreement bearing date October 20, 1904, between J. C. Muther and W. A. Hopkins, with John Rieck, pertaining to the Grant claim and

covering the ground in controversy.

The COURT.—It may be received in evidence and marked Defendants' Exhibit 34. [319]

[Testimony of Nicholas R. Barge, for Defendants.]

NICHOLAS R. BARGE, a witness on behalf of defendants, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GILMORE.)

My name is Nicholas R. Barge; I am a miner and have been mining in the Nome vicinity since 1899. I am acquainted with a certain claim in the Nome district known as No. 1 Bench or Grant claim, near Moonlight Springs. I first knew that claim in 1901 or 2. I mined in that vicinity on No. 4 and 5 Below on Anvil and No. 5 Cooper. No. 5 Cooper is a little less than a mile to the east of the Grant claim. We hauled water over there to our camp for two winters from Moonlight Springs. Part of the time I worked for myself on a lease and part of the time I worked for a man by the name of Peters. In the latter part of the summer or in the fall of 1901, I observed some men working on the Grant claim within the boundaries of the Grant claim. I assisted Surveyor Dan Jones in chaining at the time he surveyed the Grant claim during this month. I know where the boundaries of the Grant claim are on the ground to-day. I could not say positively that I was familiar with its boundaries before that. The men that I saw working on the Grant claim in the fall of 1901, were working about one hundred or one hun-

(Testimony of Nicholas R. Barge.)

dred and fifty feet, I should say, to the eastward of the southwest end of the Grant claim. From the surveying we did there this month I became familiar with the boundaries of the conflict area in this lawsuit. Those men that I observed in the summer or fall of 1901, were, I believe, working within the ground in conflict. I was upon the Grant claim in the fall of 1902. I know Mr. Howard and Mr. Doverspike. In 1902, I saw men working on the southwest end of the Grant claim, practically in the same place that the men were working [320] in the fall of 1901. During the winter of 1903 I was upon the Grant claim lots of times. Men were engaged in mining in that part of the Grant claim at that time. They had a windlass and were taking out a dump. Their work was visible to anyone passing along the surface towards Moonlight Springs. I knew Messrs. J. C. Muther and W. H. Bard. I observed them working on the Grant claim. I knew the men that were working for them. I remember one, his name was Emil Prosteeon, or something like that. Muther and Bard had cabins on the Grant claim. I saw them in 1904. The cabins were a little northeast, about four hundred feet, I guess, from the southwestern corner of the claim and on the ground in controversy. The cabins stood just off to the eastward toward the railroad track.

Q. Now, describe to the Court, will you, the buildings that were on the claim in the year 1904, as fully as you can recall them?

A. There were two small buildings, one of them

(Testimony of Nicholas R. Barge.)

painted white or a very light building anyway. (Continuing:) They were doing work there at the time, sinking shafts and taking out a little dump. In 1904 and 5 there was a dump there that was very close to the line, as I remember it now; I would not say exactly. I was familiar with the Grant claim in 1905. At that time I arranged with my partner who was going out on the same boat, to get a lease from the owner outside; he told me to go back on the ground. We had some papers drawn up. In 1905 I made an investigation of the Grant claim with a view to getting a lease on it. I thought there might be a paystreak and I wanted a lease on the ground.

I have no interest whatever in the case. [321]

Cross-examination.

(By Mr. COCHRAN.)

I did not say I was very familiar with the boundaries. We were on No. 2 East Fork surveying around that vicinity for two days. The lower dam was on No. 2 East Fork. It was very close to the line. The railroad wasn't put through there on that claim in 1902. [322]

[Testimony of Charles Olsen, for Defendants.]

CHARLES OLSEN, a witness for defendants.

Direct Examination by Mr. GILMORE.

My name is Charles Olsen. I live at the present time out on Anvil Creek opposite No. 5, about six hundred feet to the north of Banner Station. I am a claim owner in that vicinity and have been interested in my claim off and on since 1901. I am mining at

(Testimony of Charles Olsen.)

the present time. I know the Grant claim in the vicinity of Moonlight Springs. I first saw that claim in 1899. I was across the claim at that time. I observed the initial stake, in September, 1899. As near as I can recall, the initial stake was about three hundred feet east of the railroad track, where the railroad track first was placed. The railroad track was in that locality running in from Anvil Creek along discovery claim, running east of the boundary line of Discovery claim. I was on the Grant claim in 1900. I passed by there several times. I was in the locality of the initial stake of the Grant claim in 1900. I know where the Grant claim is marked to-day in that locality. In September, 1900, there were three men there at the time I passed. Two of the men seemed to be working and one looking on. I know a man by the name of Kingsbury, I knew him in Nome at that time. He was with the Corwin Coal Company. He was one of the men that I saw on the claim that day. I observe a map, Defendants' Exhibit 11, on the wall. I do not know what portion of the Grant claim is now in controversy in this lawsuit.

Q. Do you know where the railroad track crosses the Grant claim? A. Now?

Q. Yes. A. Yes, sir. [323]

Q. Do you know where the red cabin is where Captain Smith lives?

A. Yes. (Continuing:) I was in that cabin about ten days ago. I can point out on the map about where I saw the men at work in 1900. It was about

(Testimony of Charles Olsen.)

here between the figure 1 and the letter G in the word Grant on the map, Defendants' Exhibit 11. I know Hopkins was working on the Grant claim in 1903 with Muther. I didn't see Muther working but I saw him on the ground. Muther lived in a cabin standing about twenty feet east of the railroad track, where the railroad now stands. I knew him personally. I spoke to him on the ground out there several times. I did not see him mining; I saw him out there panning. There were two cabins connected there. There is one cabin there now. I don't know what became of Muther and Bard's cabins. I have no interest in the lawsuit.

Q. When you were on the claim about ten days ago, was Capt. Smith living there in a cabin?

A. Yes.

Cross-examination.

(By Mr. COCHRAN.)

I live about six hundred feet north of the Banner Station. I have lived there off and on since 1901. I have owned a claim there since 1900. I staked it. I have no conflict with the plaintiff, Pioneer Mining Company, over my ground. The reason I went across there in September, 1899, was a person by the name of Brown had a claim on Penny River. We passed up there when we went to Penny River, every time we went up. I don't own any ground there. There was a trail; the trail ran by the Grant claim, that is, everybody passed there. We crossed there first on Glacier and then on Boulder. I did [324] not own any ground over there in 1899. I don't own

(Testimony of Charles Olsen.)

any claims in the vicinity of Moonlight Springs, never made any locations there. I did know something about the ground in that vicinity in 1899. I was over it several times. I was in the employ of a man on Anvil, a man named Graham. I went with him and we saw the stakes there. I saw the Grant stakes in 1899. The initial stake was marked "Grant" claim, that was all I could see.

Q. And you just saw one stake?

A. That is all we took notice of.

Q. And that lay pretty near north of Moonlight Springs? A. No, about northeast.

Q. Northeast of Moonlight Springs?

A. Yes. (Continuing:) I said it lay about three or four hundred feet east of the railroad track, where the railroad track was in 1900. There was no railroad track there in 1899.

Q. Now, did you just see the word "Grant" written on the stake? A. Yes.

Q. That is all you ever saw on the stake?

A. Grant claim; yes.

Q. Just Grant claim? A. Yes.

Q. Was that written on there with a pencil?

A. Yes, with a lead pencil.

Q. What kind of a stake was it?

A. A willow, about two inches in diameter.

Q. How did you know that was the initial stake?

A. It must be because there was the name of the Grant claim.

Q. You just guessed at that?

A. No, I didn't guess it; the other party saw it.

(Testimony of Charles Olsen.)

We inspected [325] the Oakland Bench that stood there. (Continuing:) We just inspected the stakes that were there. There was nothing else on the stake that indicated that it was the initial stake except the name Grant claim. We were trying to locate some property. We saw lots of stakes out there. No, I do not mean to tell the Court that I remember all the stakes I saw. I remember this stake because in 1899 Brown and I went over there. We went to the springs and he looked at the stakes then and he says, "That stake is named after a great man." I never saw that map on the wall before I came here, nor one like it. I saw Kingsbury, he was one of the three men that was there, he was the one standing looking at the two that were working. At the time I was there I was going across over to Penny River. I saw lots of people working out in that vicinity but not the Pioneer. The Pioneer were working all along Anvil Creek. I did not see several men working around there, around Moonlight Springs. I knew Mr. Kingsbury then, had met him in town. I have been mining lately.

Q. Have you been convicted of misdemeanors here in Nome several times? A. I have three times.

Recross-examination.

(By Mr. GILMORE.)

Q. These crimes were supposed to be the giving of liquor to natives? A. Yes, sir.

Q. Were you ever convicted of any other crime than the three you have spoken of?

A. No, I was accused of things but I am not guilty.

(Testimony of Charles Olsen.)

Q. Were you ever accused of any crime affecting your truthfulness? A. No. [326]

Testimony of Sidney Moore, for Defendants.

Direct Examination.

(By Mr. GILMORE.)

My name is Sidney Moore. I am employed by W. J. Rowe, teaming. I first came to the Nome district in 1901. I have been engaged since that time in mining and teaming most of the time. I know the Grant claim; I also know the Napa near Moonlight Springs. I first got acquainted with the Napa claim in September, 1902. I worked on the Napa claim. I had a lay there from A. G. Kingsbury. I was engaged in mining on the Napa in 1902 under that lease, with A. G. Applegath. Applegath is now in Portland, Oregon. I recall Arthur Gibson surveying the Napa and Grant claims out there on or about the 30th of September, 1902. Mr. Applegath and I were on the ground at the time Mr. Gibson made the survey.

Mr. Applegath and I acted as chain men for Gibson. We erected the stakes and carried the chain. I cannot say that I know a man by the name of C. L. Spanggard. Mr. Kingsbury, Applegath and myself and one other man were present with Gibson at the time of the survey. I wouldn't want to say just how long the other man stayed there with us. I think he was there most of the time in that vicinity while we were surveying the ground, the Grant and Napa claims. My recollection is that he didn't have anything to do with the chaining or assisting the surveyor. I visited the Grant claim at Mr. Gilmore's

(Testimony of Sidney Moore.)

request to observe the corners, about two weeks ago. I was accompanied by Dan Jones, the surveyor, at the time I went to the corners of the Grant claim.

Q. Where did you find the marks at the time you surveyed with Mr. Gibson, with reference to where you found them [327] when you were out there with Mr. Jones, two weeks ago?

A. I should judge in the same place.

Q. At the time you were out there in September 30, 1902, state whether or not the Grant claim was well marked.

A. It was. (Continuing:) It was marked with five stakes. In surveying the claim we did not put any stakes down, we just surveyed the stakes that were up. On the Napa we put stakes down, I remember that. In 1902 and 3 we lived a little ways below, just below the break in the hill there a little south of the Grant claim.

I knew C. T. Howard and George Doverspike and Fred Williams, but I did not know Schue. Williams and Howard and Doverspike lived in a cabin on No. 2 East Fork Moonlight, in the winter of 1902 and 3. I observed those gentlemen working on the Grant claim in 1902 and 3 on the southwest portion. They were engaged in sinking some shafts and doing rock-ing in the hole. I was acquainted with Mr. Kingsbury, I had a lease from him in 1902 on the Napa. My home in 1902, in Nome, was below the Standard Oil, adjoining the property of the Pacific Coal & Transportation Co. that Mr. Kingsbury had charge of.

(Testimony of Sidney Moore.)

I have no interest whatever in the result of this lawsuit.

No cross-examination. [328]

Testimony of Ai Brown, for Defendants.

AI BROWN, a witness on behalf of defendants, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GILMORE.)

My name is Ai Brown; my business is mining. I have mined most of the time since 1901 in the vicinity of the Grant claim. I am acquainted with the ground in the vicinity of Moonlight Springs. I first got acquainted with the ground out in that vicinity in the summer of 1904. I know the biggest part of the Grant claim. I was out in that vicinity in the spring of 1905. I know a man by the name of J. C. Muther. He was mining on the west end of the Grant claim in 1905. I indicate on Defendants' map, Exhibit 11, by the figures "69" with a circle around it, where I saw Muther working in the spring of 1905. He was working there in the month of April. During that time I was living in a cabin on No. 2 East Fork, Moonlight, owned by the Caribou Mining Co. in charge of Roland Sutherland. Roland Sutherland was living in the cabin with me. Muther was engaged in sinking shafts and stoping out. The work they were doing at that time was open and visible to anyone crossing the claim in that vicinity. The work that Muther and his men were doing was plainly visible to us from where we were living on

(Testimony of Ai Brown.)

No. 2 East Fork Moonlight. We were up about five or six hundred feet away from where they were working. I performed work myself in 1905 on the Grant claim for Muther and Bard. I worked about twenty-five or twenty-six days, the last of March or first of April. I sank two shafts and worked under ground stoping out the running drifts. I know now where the ground in controversy in this lawsuit is situated. The work done by Mr. Muther and Mr. Bard in 1905, was within the conflict area, or ground in controversy, and the work done by Mr. Muther was within [329] the ground in conflict. Mr. Muther and his men lived, in 1905, in a cabin just east of the railroad track, where the railroad track now is. The cabin is about twenty-five or thirty feet somewhere around there, east of the track. There were two cabins there. The cabins were visible from our cabin on No. 2 East Fork. There was a small dam right close to the cabins. I don't know who built that dam of my own knowledge.

Q. During the time you worked there in the month of March and April, 1905, did the Pioneer Mining Company or anyone, on its behalf, make any claim, while you were working there, that they claimed the ground you were working on?

Mr. COCHRAN.—Objected to as irrelevant and immaterial.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

(Witness continuing:) I know Oscar Margraf

(Testimony of Ai Brown.)

and John Rieck. I observed them working on a portion of the Grant claim in 1904. They were sinking shafts and running a tunnel. I was in the tunnel they were working in once. I don't remember the date. The tunnel was about four feet wide and possibly four feet high, and about 65 or 70 feet long.

I knew a claim out there in 1904 called the Jerome Fraction. It joined the west end of No. 2 East Fork and lay southwest of the Lyng claim, and Grant claim. During the years 1905 and 6, I observed someone working on the Jerome Fraction. They were strangers to me and I did not know them. I was out there in the fall of 1905 and spring of 1906, in that vicinity. In the fall of 1905 there were some Russians working out there. I don't know the exact length of time they continued to work [330] on the Grant claim. They were sinking shafts when I saw them. They were quite close to where Muther was working. I knew one of them, I don't know his last name, his first name is George. He is now here in the courtroom.

I have no interest whatever in this lawsuit.

Cross-examination.

(By Mr. COCHRAN.)

I was living on No. 2 East Fork Moonlight. I had a lease from Roland Sutherland at that time on the claim, and I worked there under my lease. There was no one else working there upon the claim at that time that I recall. In the year 1904 and 5 there was no one else in possession while I was there. I could

(Testimony of Ai Brown.)

not state the number of feet of conflict between No. 2 East Fork and the Grant claim. There was one cabin on the Grant claim when I first went out there. I don't know who put it there. There was one cabin on the Grant claim and one on the Caribou claim. The Grant cabin was on the west end. It was on the ground in controversy, on the Grant claim. I was familiar with the stakes of No. 2 East Fork or Caribou claim at that time. They were the stakes that I was interested in. I didn't pay any attention to the marks of the other claims. I worked for Muther about 25 days on the Grant claim.

Redirect Examination.

(By Mr. GILMORE.)

Q. Will you please step to this exhibit, Defendants' Exhibit 11, and point out as near as you can where the cabin was on the ground when you first went out to the Grant claim in that locality, show about where it was when you first went out?

A. In here (indicating). [331]

Q. Now, if the ground in controversy is marked by the dotted line up to points 8 and 9, state whether or not that cabin you first observed when you went to the Grant claim was within the ground in controversy. A. Yes, sir. [332]

Testimony of Everett Sutherland, for Defendants.

EVERETT SUTHERLAND, a witness on behalf of defendants, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GILMORE.)

My name is Everett Sutherland. My business is prospecting and mining. I have lived in the Nome District since 1902, engaged in mining and prospecting since that time. I am acquainted with the claims in the vicinity of Moonlight Springs. I got acquainted out in that vicinity in the fall of 1904 at that time. I lived on No. 2 East Fork Moonlight, in the Caribou cabin. Roland Sutherland was the superintendent in charge of the Caribou Mining Company. He is my cousin. I lived in a cabin with Mr. Ai Brown and Mr. Hall. We lived in plain sight of the Grant claim, I should say two or three hundred feet from the Grant claim. In the winter of 1904 and spring of 1905, I observed men working on the Grant claim. Mr. Bard and Mr. Muther, Margraf and Rieck. I could not say how big a crew they had. I wasn't there when they started taking out their dump. They were prospecting when I observed them, sinking shafts and running drifts. I was personally acquainted with Rieck and Margraf. I knew a claim out there at that time called the Jerome Fraction. It joined the No. 2 East Fork or Caribou claim on the west. It lay a little southwest of the Grant claim as near as I can remember.

Mr. GILMORE.—If the Court please, I offer in evidence certified copy of the notice of location.

The COURT.—It may be received in evidence and marked Defendants' Exhibit "35"; said exhibit being as follows: [333]

Defendants' Exhibit No. 35.

#14558.

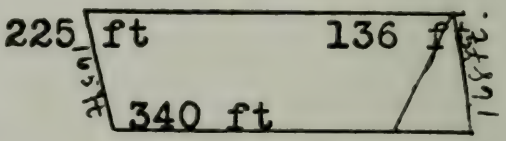
NOTICE OF LOCATION—PLACER CLAIM.

Notice is hereby given, that I, the undersigned, a citizen of the United States of America, having complied with the requirements of the Revised Statutes of the United States and all local customs, rules and regulations, and having on this 1st day of January 1902, discovered gold within the limits of the ground hereinafter described claim by virtue of said discovery and location as placer mining ground the following described premises, situate, lying and being in the District of Alaska, in the Cape Nome Mining District on what is known to me as East Fork Moonlight Creek, a tributary of Anvil Creek, the said mining claim being and lying within the following described lines to wit, Beginning at my initial stake or place of beginning where the original copy of this notice is posted which stake is situated at the eastern boundary of end of the said claim, and as follows with reference to the natural objects or permanent monuments viz: and running from said initial stake in an northerly direction 225 feet, to a stake marked No. 2 being N. E. corner number one, thence at right angles, in an westerly direction 165 feet, more or less, to a stake marked No. 3, being N. W. corner number two, thence at right angles in an southerly direction

340 feet more or less to a stake marked No. 4 being S. W. corner number 3, thence at right angles in an easterly direction 168 feet more or less to a stake marked No. 5 being S. E. corner number 4, thence at right angles in an northerly direction 136 feet more or less to the initial stake or place of beginning.

Bounded on east No. 2 East fork Moonlight on the North by the Grant claim.
" " west " 1 " " South " Winter Fraction.

a fraction



as per diagram.

[334]

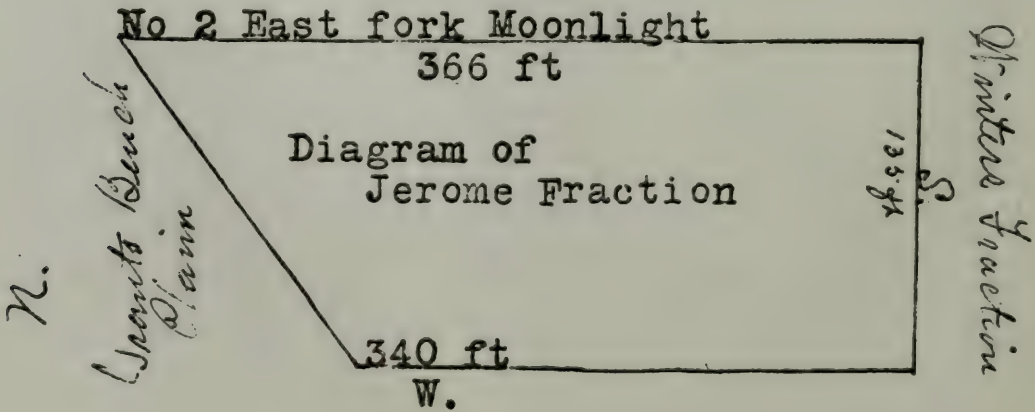
The area within the said lines being in shape, and in extent less than twenty acres my intent and purpose being to locate and claim the above described property of the aforesaid East Fork Moonlight Creek for mining purposes, more particularly described per marginal notes— This claim shall be known as *The Jerome Fraction Placer Mining Claim on East Fork Moonlight Creek* Located the first day of January, 1902.

GEORGE CRAWFORD,
G. O. REILLY,
Locators.

Witnesses:

W. D. SHUE.
FRED WILLIAMS.

-E-



No. 1 E. fork Moonlight.

Above figures are more or less.

Filed for record 11:50 A. M., March 29, 1902.

Request of Fred Williams.

T. M. REED,
Recorder.
W. W. Sale,
Deputy.

(Recorded in Vol. 103, page 394.) [335]

Mr. GILMORE.—I have here an amended location notice of the Jerome Fraction, bearing date May 31, 1902, by the same locators, giving a survey description of the Jerome Fraction and I ask leave of the Court to have it marked for identification for further reference.

The COURT.—It may be marked Defendants' Exhibit 36 for Identification; said exhibit being as follows:

[Defendants' Exhibit No. 36.]

“ #14936.

AMENDED LOCATION NOTICE.

We the undersigned, do hereby amend our original location notice of placer claim known as the 'Jerome Fraction' on the East Fork of Moonlight Creek, Cape Nome Recording District, Alaska, according to survey of said claim.

Commencing at stake No. 1, which is identical with the initial stake of placer claim No. 2 on East Fork of Moonlight Creek thence N. 27° E.—249.4 ft. to stake No. 2; thence S. 77° 50 W.—305.6 ft. to stake No. 3; thence N. 89° 32' W.—626.3 ft. to stake No. 4; thence

(Testimony of Everett Sutherland.)

S. 63° E.—791.2 ft. to stake No. 5; thence N. 28° 32' E. 223.8 ft. to stake No. 1 or place of beginning containing 3.86 acres. Magnetic variation 19° 40' E. This claim is bounded towards the east by 'No. 2 on East Fork of Moonlight Creek,' towards the north by 'Grants Claim' and 'Reparia' also known as 'No. 1 Moonlight Creek' and towards the South by 'Winters Fraction.'

Nome, Alaska, May 31st, 1902.

GEORGE CRAWFORD,
TOM O'REILLY.

Filed for record 11.08 A. M., June 3, 1902. Request of T. O'Reilly.

T. M. REED,
Recorder.
E. Whittard,
Deputy.

(Recorded in Vol. 105, page 128.)" [336]

Cross-examination.

(By Mr. COCHRAN.)

I saw those parties doing some prospecting over there on the Grant claim. I was there all winter up until March, I think, March, 1905. They were not prospecting during March. Margraf left sometime the first of the year and went down to Little Creek. Muther and Bard were there all winter. Hopkins left there sometime about the first of the year, but Muther was there all winter. Muther was prospecting himself.

(Testimony of Everett Sutherland.)

Redirect Examination.

(By Mr. GILMORE.)

Q. Mr. Sutherland during all of the time that you were out there, the times you have testified, did you ever hear or know of a claim called Bench No. 1 Moonlight? A. No, I did not.

Recross-examination.

(By Mr. COCHRAN.)

Q. Did you have any reason to know or hear of it?

A. No, I did not. [337]

Testimony of George Konchenka, for Defendants.

GEORGE KNOCHENKA, a witness on behalf of defendants, being first duly sworn, testified as follows:

Direct Examination by Mr. GILMORE.

My name is George Konchenka. My business is mining. I have been mining around Nome since 1903. I know where the Grant claim is. I got acquainted with the Grant claim in 1905. I worked on the Grant claim for Bard and Muther. I started to work in January, 1905, working down in a drift with a pick and shovel. Working for wages. Sometimes they had five men and sometimes more, more times seven men at work. John was the name of the boss, I don't know his last name. Men were working in two places on the ground, working in shafts. In one place they were working down in a shaft hoisting up dirt to make a tunnel. I worked a couple of days on the tunnel. The shafts were about sixteen or seventeen feet deep. They took out dumps that

(Testimony of George Konchenka.)

year. I don't know the size of the dump; they were hoisting all winter.

Q. Now, did some more Russian boys work there during the winter of 1905?

A. Yes. (Continuing:) I worked with them that winter. I worked something like about three months. I started sometime in October or September and worked until after Christmas. In January I sold out.

Q. What were the Russian boys doing there, did they have a lease? A. Yes.

Q. From whom?

A. From Bard and Muther. [338]

Q. How many of the Russian boys besides you?

A. Two besides me.

Q. How many men were there working, do you know? A. Yes, four men were working.

Q. You had one extra man?

A. Yes. (Continuing:) In the winter of 1905 I was prospecting and found just a little pay, not very much. We took out a small dump. I sold out in January, 1905. That winter we lived in two small cabins close to the railroad. They were those cabins that Bard and Muther used while they worked there. After I sold out I returned later on to the claim, in the spring-time. The other Russian boys continued to work after I left, prospecting, and did some other work. They worked a couple of months after I sold out. In the summer of 1906 they sluiced that small dump, sometime in the spring or summer. I was working at that time over on Dexter.

(Testimony of George Konchenka.)

Q. Where are those Russian boys now that worked there sluicing in 1906, if you know?

A. One is dead and the other has gone to Siberia. (Continuing:) When I was working for Bard and Muther for wages I worked on the dam and the tunnel. I helped fix up the dam, helped build it. Some of the other men were working down in the shaft.

I know where the ground in controversy in this lawsuit is. The place where I worked for Bard and Muther is indicated on Defendants' map, Exhibit 11, by the figures 69 with a circle around them. The Russian boys with myself, after we got our lease in the fall of 1905, worked a little bit further up towards the point 1 some place. We had a lease for three men, and we had one extra man working, four altogether. We did some prospecting and sinking holes and hoisting pay-dirt. We [339] found one place of good pay. The wages that winter were \$3.00 a day and board. Board was valued that winter at \$2.00 or \$2.50 per day.

I know Mr. Stevenson and Charlie Johnson of the Pioneer Mining Company.

Q. Did anybody connected with the Pioneer ever claim that ground where you Russian boys were working at that time?

A. No. (Continuing:) I heard of a claim called Bench No. 1 Moonlight while I was working out there. I just heard of it, I don't remember who I heard it from.

I have no interest in this lawsuit.

(Testimony of George Konchenka.)

Cross-examination.

(By Mr. COCHRAN.)

The first time I was out there was when I was working for wages in 1905 and while I was working there I heard of Bench No. 1. I don't know who it belonged to. Just when I worked there I heard it. I don't know that the Pioneer Mining Company claims the ground. I knew Bard and Muther; I don't know who the ground belonged to. [340]

Testimony of August Carlson, for Defendants.

AUGUST CARLSON, a witness on behalf of defendants, being first duly sworn, testified as follows:

Direct Examination by Mr. GILMORE.

My name is August Carlson and my business is mining. I have been a miner around Nome since the spring of 1899. I am acquainted with part of the Grant claim out around Moonlight. I first knew it in the winter of 1905. I was hired to go to work there somewhere about the middle of February, 1905. I was employed by W. H. Bard. I worked about a month, maybe a little more. We were sinking shafts, making tunnels and stoping.

Q. About how many dumps did you take out Mr. Carlson?

A. Three. (Continuing:) Two small ones and one good sized one. It was all pay gravel in all three of the dumps. They had nine men employed at the time while I worked there, including Mr. Muther. We lived in the cabins on the other side, east of the railroad track. I know the portion of the ground in controversy as shown on the map. We sunk three

(Testimony of August Carlson.)

shafts. One shaft here, near figure 66 and somewhere up here, three shafts we sunk. It was within the ground now in controversy. I know of a tunnel that was constructed out there at that time. I did not work in the tunnel but I was in the tunnel. I was in the tunnel about twenty or twenty-five feet. That was as far as I have ever seen it. I was over the Grant claim this fall.

I have no interest in the result of the lawsuit.

Mr. COCHRAN.—No cross-examination. [341]

Testimony of Isaac J. Kortright, for Defendants.

ISAAC J. KORTRIGHT, a witness on behalf of defendants, being first duly sworn, testified as follows:

My name is Isaac J. Kortright. I have been a miner since I have been in this country. I have experience in operating drills. I know a claim called the Grant claim in the vicinity of Moonlight Springs. I knew Captain Sperry very well. I think the first year I got acquainted with him was in the spring of 1907. He represented some company in Nome but I can't tell you the name of the company. He was working on the Grant claim.

Mr. GILMORE.—At this time I offer a certified copy of a general power of attorney from the defendant Pacific Coal & Transportation Company to Eugene Sperry, bearing date the 5th day of May, 1905.

The COURT.—It may be received in evidence and marked Defendants' Exhibit 37.

(Witness continuing:) That is the same Sperry

(Testimony of Isaac J. Kortright.)

who had charge of the Grant claim. He was known as Captain Sperry.

Q. Do you know where Capt. Sperry is, Mr. Kortright?

A. No, only from hearsay. I have heard he was dead.

Q. Do you know where he died, did you ever hear?

A. On the coast of California some place, I don't know exactly where.

Q. He was drowned? A. Yes.

Q. Now, Mr. Kortright, did you ever do any work on that Grant claim for Captain Sperry, or anyone else?

A. I did the work, what I did I did for Red Wood, we called him Redwood. [342]

Q. He was drilling for Captain Sperry at the time?

A. He was drilling for Captain Sperry at the time. (Continuing:) Captain Sperry was there with us every day, doing the panning. Redwood was a nickname. I don't know his other name and I don't recall how long I worked there in the spring of 1907. It was after the break-up. I assisted Mr. Red Wood in removing the drill from the premises at that time, about the time of the break-up. I don't know now how long Mr. Wood had been drilling on the Grant claim.

Cross-examination.

(By Mr. COCHRAN.)

I worked on the Grant claim myself, four or five days, probably. It was something like 150 or 200 feet

(Testimony of Isaac J. Kortright.)

above the lower ditch as I called it at that time, where we worked at that time. There might be other ditches there; it was up on the first terrace. It was up on the first rise, raised ground. It wasn't so very far from the railroad. I saw Captain Aansen drilling there afterwards, but as to how much he drilled I don't know. That was in the spring of 1907. The drill belonged to a man that we called Redwood. In the spring of 1907, sometime, we took the drill down to Hastings.

Redirect Examination.

(By Mr. GILMORE.)

Captain Aansen was using another drill. The hole that was drilled while I was working there, was something like 60 feet in depth. I recall it was on the first plateau or bench. I don't recall that I was out in that vicinity after June, 1907. [343]

Testimony of Albert Hartman, for Defendants.

ALBERT HARTMAN, a witness on behalf of defendants, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GILMORE.)

My name is Albert Hartman. I reside in Nome and have lived in Nome and vicinity for six years. I know the Grant claim. I first knew it in 1907. I worked on the Grant claim for Louis Woods. He was working for Captain Sperry, drilling. I worked there two days. Mr. Wood had been drilling on the Grant claim prior to the time I went there, I don't know how long. There was no other drill there the

(Testimony of Albert Hartman.)

days that I worked there. I worked there the latter part of May, I don't remember the exact date. I was not working for Wood at the time Captain Aansen and Johnson were working on the east end with a drill.

I have no interest whatever in this lawsuit.

Mr. COCHRAN.—No cross-examination. [344]

Testimony of Eugene Miner, for Defendants.

EUGENE MINER, a witness on behalf of defendants, being first duly sworn, testified as follows:

My name is Eugene Miner. My business is mining and prospecting. I have done a lot of mining in the Nome District out around Anvil. I have a lease out there on the other side of Moonlight, on the third tier opposite No. 2 Above on Anvil Creek. I know the Grant claim near Moonlight. I have been in the Nome District since 1899. I knew both Muther and Bard on the Grant claim. I have seen Muther on the Grant claim mining. I think it was in 1904 or 1905. He was at a cabin there. It was right near the railroad track. I can't recall but one cabin with a canvas shed to it. I saw some shafts there and dirt thrown out pretty near it, a dump thrown out.

I have no interest whatever in the result of this lawsuit.

Cross-examination.

(By Mr. COCHRAN.)

Muther and his men were living west of where the railroad track is now. I can't tell you exactly where the cabin was then, but I think it was west of where

(Testimony of Eugene Miner.)

the railroad track was. I think the cabin burned down since. I was there in 1906 when three Russians were there, and the cabin burned down after that. That was the cabin they were living in. I never saw a cabin after 1906. [345]

Deposition of S. D. Waysman, for Defendants.

My name is S. D. Waysman. My business is mining and dredging. I have been engaged in mining in the Nome District for twelve years, since 1899, principally around Nome. I know most of the creeks and mining claims around Nome. I have also mined in the Solomon District. I am interested in dredging down there, in the Solomon Dredging Co. I am one of the directors of the Solomon Dredging Co. I know a claim in the Nome District called the Grant claim. I got acquainted with the claim in 1907 or 1906, I don't remember which. I drilled on it for Captain Sperry; he was prospecting it for mining purposes for himself. He told me he had a lease from the Pacific Coal & Transportation Company. I must have drilled there two weeks. I drilled with a man by the name of Woods, Louis Woods. We had a six-inch bit with gasoline power. I helped Mr. Wood drill six or eight holes, something like that, on the west end of the Grant claim. I know where the Moonlight Springs are. We drilled about two hundred feet from the springs. We hauled water from there to the drill. We were living out there at the time. We were living in a black cabin that stood east of us. At the time I was working there drilling I became acquainted with the cor-

(Deposition of S. D. Waysman.)

ners and monuments of the Grant claim. The black cabin we lived in was within the boundaries of the claim. I know where the railroad crosses the Grant claim. We drilled west of the railroad.

Q. Now, please examine this plat here, Mr. Waysman. On this plat you will see marked the Grant claim, being described on the plat by the letters in ink A-B-C-D and E. Please take a pen and indicate the place about where you drilled with the drill for Mr. Woods and Captain Sperry in the spring of 1907. [346]

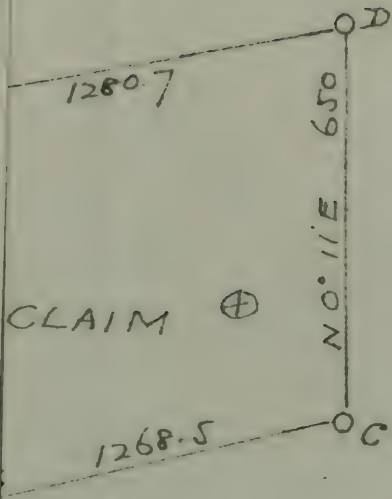
(Witness marks the plat with the figures 1-2-3-4-5.)

A. I don't know how many holes there were, but I think I drilled in about six places, six or eight holes.

(Witness continuing:) The mark X with a circle around it, on the map, shows approximately where the cabin stood that we lived in while we were drilling.

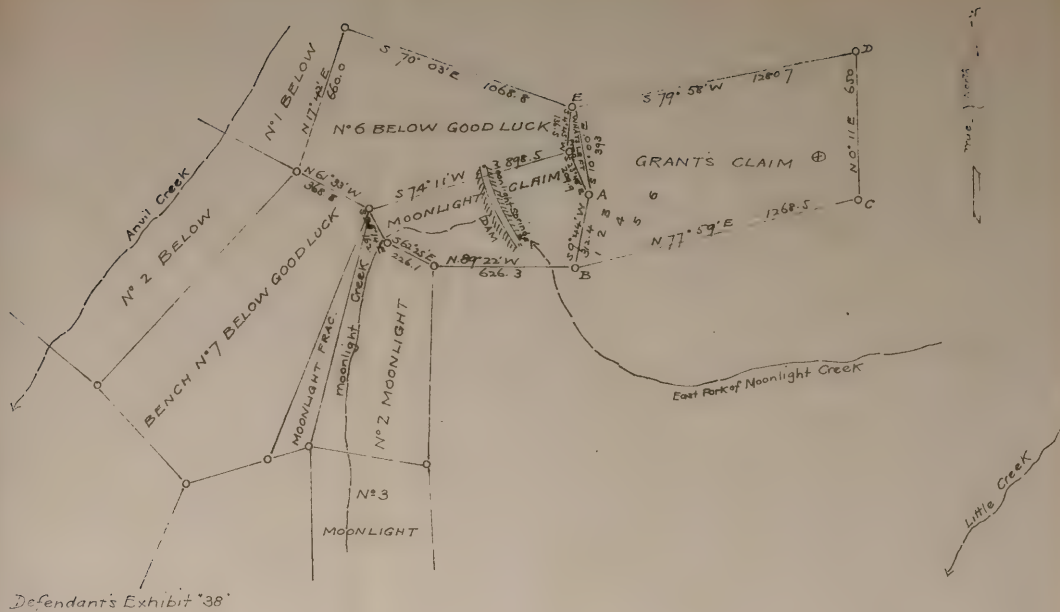
Mr. GILMORE.—We offer the plat in evidence, if the Court please, for the purpose of illustrating the evidence of the witness.

The COURT.—Let it be received in evidence and marked Defendants' Exhibit 38; said map being as follows: [347]



of Moonlight Creek

Little Creek



(Deposition of S. D. Waysman.)

(Witness continuing:) At the time we were drilling we found gold in the southwest corner of the claim. I found what I considered to be very good prospects with the drill. I wanted the ground but I wasn't panning it, it wasn't my duty to pan, but what I saw, and I didn't see it all, I knew I wanted it. I made an effort to get a lease on the ground at that time. At the time we were drilling there I did not see anyone else in possession other than Captain Sperry and Wood, or anyone else working within the boundaries of the ground, and no one else ever claimed the ground while I was working there. And no one made any objection or protest to our drilling on the ground at that time.

I have no interest whatever in the result of this lawsuit.

Cross-examination.

(By Mr. COCHRAN.)

I did this drilling in 1906 or 1907 in the spring time. There was snow on the ground.

Redirect Examination.

(By Mr. GILMORE.)

I don't remember what month it was in, I could hunt it up in my books. It was along when it was thawing, about the time of the break-up. It was thawing at the time we commenced to drill out there. In my best judgment it was in May, 1907. [349]

Deposition of W. H. Bard, for Defendants.

My name is W. H. Bard; I am 49 years old and reside at Portland, Oregon. I have resided at Portland, Oregon, for eighteen months. I resided in

(Deposition of W. H. Bard.)

Alaska from 1899 to 1906 and was engaged in the practice of law at Nome. I am acquainted with the defendant, Pacific Coal & Transportation Co. I acted as attorney for the company from June, 1903, until June, 1906. I know the Grant claim. I became acquainted with the Grant claim about the latter part of June, 1903, and controlled the claim until 1906 for the Pacific Coal & Transportation Co. I had a lease in 1904 and 1905 with J. C. Muther. Muther and I mined the claim.

Q. Attached hereto is a blue-print marked Exhibit "A" to this deposition, showing the said claim as it is now marked on the ground and its relative position to the surrounding claims. Please examine the said blue-print and indicate by a circle the portion or portions of said placer claim upon which you or you and your associates performed mining work, if you answer that you did perform work.

A. Yes, I have marked the blue-print. (Continuing:) My associates and I extracted winter dumps on said claim and they were worked as on the blue-print indicated. I was not personally acquainted with W. N. Grant, and we were never upon the Grant claim together.

Q. If to some of the preceding questions you answer that you and your associates mined upon the westerly end of the said Grant claim in 1905 or 1906, state whether or not the Pioneer Mining Company, or anyone on its behalf ever made any protest against you or your associates [350] working on said portion of said claim, or made any adverse claim or

(Deposition of W. H. Bard.)

claims whatever of title thereto.

A. Yes, once. (Continuing:) I know a claim called the Bob Lyng claim upon which the Moonlight Springs are situated. Have known it since 1903. I know the claim called Bench No. 1 Moonlight, or the Jensen claim. I know of the claim up there but there were so many mines and so many people that attempted to point out the location of the Moonlight Bench No. 1 that I never was able to satisfactorily fix the boundary lines of said claim fully. I know that the Pioneer Mining Company claimed that the Jensen Bench claim No. 1 Moonlight conflicted with the westerly end of the Grant claim.

I cannot tell at this time how much gold was taken out and mined from the westerly end of the Grant claim, but there never was enough to pay expenses of working the property. The royalty was paid over to the Pacific Coal & Transportation Company. The Pioneer Mining Company never at any time claimed any part of the gold that was mined by me or my associates, or the laymen of the Pacific Coal & Transportation Company on the ground. Messrs. Howard and associates were working the westerly end of the Grant claim when the same was turned over to me as attorney or agent for the Pacific Coal & Transportation Co., and thereafter Margraf and associates had a lease on the property during the winter of 1903 and 4 and J. C. Muther and myself had a lease from 1904 to 1905. During the summer of 1905 a party by the name of Hopkins and Belvail worked the property during the summer. Before the com-

(Deposition of W. H. Bard.)

mencement of my time with the company, in 1903, I know nothing whatever of the claim. While I was agent and attorney for the company I executed leases. Leases were given to J. C. Muther and myself and to [351] Hopkins and Belvail and to Margraf and associates. All of them that I have named, with the exception of Margraf and associates, did all the work where I have indicated by pencil on the blue-print. Mr. Margraf and associates worked promiscuously all over the claim. The Pioneer Mining Company did not enter any protest so far as I know.

Q. During all of the years that you testify you were the attorney and agent for the defendant, Pacific Coal & Transportation Company, state whether or not at any time, to your knowledge, the plaintiff, Pioneer Mining Company, or any of its officers or agents, were ever in possession of any part or portion of the Grant claim, as marked and indicated on the blue-print, marked Exhibit "A" to this deposition.

A. No, with the exception of once or twice they went on the claim in the absence of myself or agent, and did some assessment work.

Q. State during which years, to your knowledge, the defendant Pacific Coal & Transportation Company was in the actual, physical possession of the westerly end of said Grant claim.

A. 1903, 1904, 1905 and 1906. (Continuing:) The Pioneer Mining Company, during the time that I was in charge of the Grant claim never tried to exercise any possession or ownership over said west-

(Deposition of W. H. Bard.)

erly half of the Grant claim as indicated by pencil marks on the blue-print, with the exception of once, I believe in 1904 when Mr. Lindeberg, president of the Pioneer Mining Company, sent over a man and informed me that Mr. Lindeberg had requested me to stop working, but in return I put the man off the claim and never heard anything more of it. [352]

I was not present when the Grant claim was staked, and only know where the stakes were located in 1903. The stakes of the Grant claim as pointed out to me, and as I understood, were where the stakes are indicated on the Grant claim, as per attached blue-print. The stakes were large, substantial stakes, plainly marked and indicated the center and corners of the Grant claim. These corners were marked by many stakes, indicating that the ground had been staked many times, but in 1903 there were stakes and indications that thoroughly marked and fixed the corners and center of the Grant claim, as per inclosed map. I examined the stakes very thoroughly many times in 1903.

I never have known definitely where No. 1 Bench Moonlight was located. I cannot say as to the whereabouts of the Nelson or Jorgensen claim because I never examined the stakes on that claim. I know that the people designated, however, had a claim in that vicinity, but I never examined the stakes at any time so far as I recollect.

Q. What knowledge, if any, did the Pioneer Mining Company, its agents or representatives have in regard to work done upon the Grant claim by you or

(Deposition of W. H. Bard.)

others? State the particulars of such knowledge, if any.

A. The Pioneer Mining Company knew that the claim was being worked by the Pacific Coal & Transportation Company. As a matter of fact, I was furnished water from the ditch of the Pioneer Mining Company to clean up within the spring of 1905. The managers of the Pioneer Mining Company have always known, during my time, that I was connected with the Pacific Coal & Transportation Co. [353]

Mr. GILMORE.—I offer in evidence the blue-print marked by witness, in evidence, for the purpose of illustration.

The COURT.—It may be received for that purpose and marked Defendants' Exhibit 39, said exhibit being as follows: [354]

Testimony of S. Lynn Fox, for Defendants.

S. LYNN FOX, a witness on behalf of defendants, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GILMORE.)

My name is S. Lynn Fox. My business is mining. I first came to Nome vicinity in 1904; been here off and on ever since. I know the Grant claim at the foot of Anvil mountain. I first got acquainted with that claim in 1908. I know the defendant, M. D. McCumber. I had some dealings with him with reference to that claim in 1908. I was one of those that entered into a contract with Mr. McCumber to do a certain amount of work on that claim. My associate was Ben Hersey. I contracted to sink a shaft 100 feet deep; we went upon the Grant claim that fall. In December, 1908, we sunk the shaft; we sank twenty-four feet in 1908. We were living at that time on the Grant claim. We continued the work in January, 1909. We sank the shaft 84 feet deep. On the top we had solid schist and below that we had solid rock. We dug through the rock. The first 18 feet we thawed, and after that we used the sledgehammer. It was 68 feet from the surface and then we put in a hand-drill and went 16 feet below that, making a total of 84 feet. Mr. McCumber paid us for the work. We started in on the 8th day of December, 1908, and worked until the 21st, inclusive, then we started in again on the 1st of January and worked until the 20th of April, working continuously. I executed an annual proof of labor for the

(Testimony of S. Lynn Fox.)

Grant claim for Mr. McCumber, for the year 1908, but I did not for 1909.

I know where the boundaries of the Grant claim are. I had been around them several times. [356]

Q. Was there anyone else occupying any portion of the Grant claim at the time you and Mr. Hersey were there? A. No, sir, not to my knowledge.

Q. Anyone claiming any part of the claim to your knowledge?

A. No, sir, not to my knowledge. (Continuing:) I have no interest whatever in the result of this lawsuit and I have been paid in full by Mr. McCumber for all work I did.

Cross-examination.

(By Mr. COCHRAN.)

I lived on the Grant claim while we worked there. We had a cabin we hauled there ourselves. Hauled it from over on the Submarine, about a mile from Nome. It was a tent, or double tent cabin on skids. There was no other cabin on the Grant claim when we went there. Ours was a double tent cabin. We did not haul it away from there when we got through. We left it there on the Grant claim. It was a double cabin on skids. The work we did was sinking shafts, prospecting they term it, looking for pay if there was pay there. [357]

Testimony of Benjamin A. Hersey, for Defendants.

BENJAMIN A. HERSEY, a witness on behalf of defendants, being first duly sworn, testified as follows:

Direct Examination by Mr. GILMORE.

My name is Benjamin A. Hersey. I am working now for the U. S. Mercantile Co. I have done considerable mining in the Nome District. Have resided here since 1900. I know the Grant claim. I got acquainted with the Grant claim in 1908; I had heard of it before, but never was on it. At the time I got acquainted with it I became familiar with its boundaries and its markings on the ground. I worked on the Grant claim for Mr. McCumber. We went to work on the Grant claim on the 8th day of December, 1908, and worked fourteen days. Mr. Fox was working with me. We were living on the Grant claim. In 1909 we worked from the first of January until the 20th of April, sinking a shaft most of the time. The shaft was 68 feet deep and was some thawed ground and some rock. The first 18 feet was thawed and we had to use points; the balance was in rock; we had to blast. At the 68-foot level we struck water and we wanted to get through the slide, if we could, and so we got a hand-drill, and then we went down 16 feet from the bottom of the shaft. While we were sinking that shaft personally I did some other work on the Grant claim. Surface prospecting. It is pretty hard for me to state the exact amount of prospecting I did. While my

(Testimony of Benjamin A. Hersey.)

partner was in the hole drilling, getting ready for powder, I would go down with pick and shovel around on the surface to try and get some surface diggings. I know the portion of the Grant claim in controversy in this lawsuit. I know where the railroad crosses the west end of the claim. I [358] am familiar with the map, Defendants' Exhibit 11. Between where the railroad crosses and the points 1 and 2, I did very little prospecting, but between the point 9 and the railroad track I did considerable prospecting. Our cabin was right near 9, and I went down from the cabin towards the railroad track. The character of the work I did there was such as you make a ditch like and dig beneath the sod so as to see if there was any surface diggings there. I had to dig away considerable snow to do my prospecting.

I have no interest in the result of this lawsuit whatever, and I have been paid in full for my work.

Cross-examination.

(By Mr. COCHRAN.)

The shaft we sunk was a little above the figure 9. In fact, I think just about where 9 is located on the map, as near as I can recall. It was without the ground in controversy, and our cabin was also without the ground in controversy. The work we did there was prospecting. Our idea was to get down beneath the slide and drift in. We did prospecting, we did what our contract called for, as near as we could. We did not find pay.

(Testimony of Benjamin A. Hersey.)

Redirect Examination.

(By Mr. GILMORE.)

The surface prospecting work that I did was within the bounds of the ground in controversy.

Q. During all of the time that you worked out there, and during the time you were doing this surface work, was there anyone else living on or in actual possession of any part of the ground in controversy? [359] A. No, sir.

Recross-examination.

(By Mr. COCHRAN.)

The surface work that I did out there was not in the contract. I intended to get a lay if I found anything that was encouraging. I intended to get a lay on the claim. I did this prospecting on my own account. I did it for McCumber. He paid me for sinking the shaft, but there was nothing in the contract for my surface prospecting. He did not pay me for my surface work, and I did not receive any pay for it. [360]

Testimony of Steve Johnson, for Defendants.

STEVE JOHNSON, a witness on behalf of defendants, being first duly sworn, testified as follows:

Direct Examination by Mr. GILMORE.

My name is Steve Johnson. My business principally from my boyhood up has been a sailor. At the present I am down on the beach doing a little work, hauling out boats, etc., beach work. I know the Grant claim. I first got acquainted with it in about 1907, in the fall, I think it was. I knew Cap-

(Testimony of Steve Johnson.)

tain Sperry. I know a man by the name of Captain Aansen. Captain Aanson and I did some work on the Grant claim in 1907, with a drill. We drilled on the upper end of the hillside, toward the northeast corner of the claim. We drilled a hole about 104 feet deep. We were paid \$2.00 a foot for the work by Eugene Sperry. At the time we were drilling there, there was another drill on the lower end of the claim which we called Red Woods' drill. I don't know the man's initial name. He was drilling pretty much in the southwest corner of the claim. Wood had been drilling on the claim a month or so before we went to work. I don't know exactly how long of my own knowledge. He was there when we went to work on the claim. I know Mr. Waysman. I know that he worked for Woods. I have no interest in the result of this lawsuit. [361]

Cross-examination.

(By Mr. COCHRAN.)

We drilled a hole on the Grant claim at the point where the word "drill" is written on the map. We started one hole and we didn't get very deep with one hole and then we started another. There was some panning done. I don't know whether the drilling was done for prospecting purposes or not. Eugene Sperry did the panning. I could not tell exactly how many days we were out there. We may have been ten, maybe twenty, days at work. We broke down with the gasoline engine and had to come to town to get it fixed. I had been out there before that time. I was out there in February when we got

(Testimony of Steve Johnson.)

the contract from Captain Sperry. We drilled the latter part of April and first of May. I went out in February to get the contract. I know that Woods had been drilling here a month because I was very much interested in the work. He was down there with the drill when we went on the claim. I didn't see him drilling then. [362]

Testimony of Ole Anson, for Defendants.

OLE ANSON, a witness on behalf of defendants being first duly sworn, testified as follows:

Direct Examination by Mr. GILMORE.

My name is Ole Anson. My business is prospecting and mining. I know the Grant claim. I have known it since the spring of 1907. I worked on the Grant claim, put a hole down there to bedrock on that property. We drilled a six-inch hole with a Kelly & Callaghan drill. I was assisted by S. S. Johnson, the witness that just testified. We did the work for Eugene Sperry. At the time we were drilling, there was another drill on the ground. Mr. Woods' drill was standing down towards what is called the southwest corner, in the direction of Moonlight Springs. I know that Mr. Wood had a drill on the southwest corner of the claim. I was there at that time. I was down on the Martin Bench and I was up and saw him drilling. I do not know exactly how long he drilled there; I could not place the dates. He drilled there anyway during the time that I put down two holes on the Martin Bench, another party was helping me on the Martin Bench, he put down three holes. I could not state exactly how

(Testimony of Ole Anson.)

long Woods drilled there on the Grant claim, but somewhere about three weeks, because I was supposed to be on the Grant claim on the first of March, that was my contract, and I couldn't be there on the 1st of March on account of the Martin Bench, so Mr. Woods took the contract up and went there. He drilled two holes previous to the time I got in there. I knew Eugene Sperry personally. He was on the Grant claim working there while I was there. He was there every day while Woods was drilling there. Captain Sperry did [363] the panning himself. Johnson and I drilled a hole 150 feet deep.

Q. During the time that you were working the claim, during the time that you were there, when Mr. Wood and Mr. Sperry was working there, did you observe anyone else working or living within the boundaries of the Grant Claim other than them and you?

A. No, sir. (Continuing:) I have no interest in the result of the lawsuit and I have been paid for my work.

Cross-examination.

(By Mr. COCHRAN.)

I was living on the Grant claim at that time. There was no cabin excepting an old shack on the northeast corner at that time, when I was on the claim. That was in 1907. The cabin was not habitable, that I know of. I know where a ditch runs across the lower end of the Grant claim. Captain Sperry showed me. I think it finishes up somewhere around Cooper Gulch. The claim was covered with

(Testimony of Ole Anson.)

snow and slush when I did my prospecting, and I could not tell where the lower ditch was, but there were two ditches on the ground. A portion of the ground rises up from Moonlight Springs. I did not see Mr. Wood drilling above that ditch. He never drilled on the easterly portion. He drilled on **the** westerly portion below where I drilled. He drilled on the westerly portion, because he lost the pay there in that hole. I know where the penstock of the ditch is opposite the railroad track, near the westerly corner. Woods was drilling up near there when he lost the pay, but he drilled a little bit down in the southwest, what I would call the southwest, that is where we found that little pay. [364] I could not state how much drilling he did up in the northwest portion of the claim; I was then up on the Martin Bench. We were all prospecting for money.

Redirect Examination.

(By Mr. GILMORE.)

The Martin Bench that I speak of is south of the Kiora. It is located towards Little Creek, not very far away from Portland Bench.

I said that Woods found some pay in his drilling. I saw the pannings. It was on what I call the northwest corner of the claim. Mr. Sperry showed the gold to me.

Q. This cabin that you speak of wasn't habitable, you don't know whether anybody lived in it or not?

A. No, not at that time. We pulled by it when we moved in there with a drill, but I forget whether it was habitable or not, but I don't think it was.

(Testimony of Ole Anson.)

Recross-examination.

(By Mr. GILMORE.)

I saw the pannings from Woods' drilling in the first two holes, right at the drill. Captain Sperry panned them. I saw him pan them. When he finished panning he passed it to me and asked me to look; I saw about eight or nine cents, I should judge. Sperry said, it is pretty good, if it wasn't in water. That is the remark he passed. It was all water there. [365]

Testimony of Adolph Meyer, for Defendants.

ADOLPH MEYER, a witness on behalf of defendants, being first duly sworn, testified as follows:

Direct Examination by Mr. GILMORE.

My name is Adolph Meyer. I am a machinist and miner. I first came to Nome country in 1906. I know Mr. McCumber. I know a claim called the Grant claim. The first time I got acquainted with it was on the 3d of November, 1909. I know where the monuments and stakes of the Grant claim are. I am familiar with the map, Defendants' Exhibit 11, and I understand where the corners of the Grant claim are represented on the map, and also the railroad. I moved a cabin on the Grant claim on the 3d of November, 1909. It was a red cabin. The cabin is still there and has been on the claim ever since I put it there on that date. I put it where it is now in the one place and it has been there all the time since, and has not been moved off.

Q. Will you step up to the map, Defendants' Ex-

(Testimony of Adolph Meyer.)

hibit 11, and show the Court where the cabin is on the ground?

A. The cabin is about here, about where the surveyor has it marked on the map. (Continuing:) I know the part of the Grant claim that is in controversy in this lawsuit.

Q. Is the red cabin on that part of the Grant claim that is now involved in this lawsuit?

A. Yes, on the same part. (Continuing:) Mr. McCumber employed me to go out there on the 3d of November, 1909, and I put the cabin on the ground for him. A fellow by the name of Theo. Pelitsch was with me. After we got the cabin fixed up we did some mining, sinking a shaft and prospecting. Pelitsch and I [366] dug the holes. It was below the railroad track towards Moonlight. The first we dug was between the point 1 and the railroad track, as shown on the map. We dug the hole about seventeen feet deep. We dug other shafts afterwards. In the southwest corner we dug a hole about 11 feet deep and struck slide. It was in between points 1 and 2 on the map. We dug several shafts there, about 16 feet deep. We struck water. We continued to work from the 3d of November, 1909, all winter. Besides Pelitsch a man named Fitzlaff was working there for wages, and John Kobovich. After Pelitsch quit I had a partner by the name of Louis Kern. Albert Miller also worked there. Also John Alderhall; Leo Wilhelm and a Russian named Malkoff, and a man by the name of Herman Fleming. Mr. Henry Kern also worked

(Testimony of Adolph Meyer.)

there a while after February. We dug more shafts. We dug one shaft $3\frac{1}{2} \times 5\frac{1}{2}$ feet to 28 feet deep. We used a six H-P boiler and 2 inch pump. It was a stationary pump. The shaft was dug in thawed ground.

Q. State whether or not you found any gold there in paying quantities, in that shaft. A. Yes.

Q. And from the work that you did, state whether or not you determined there was or was not a channel at that point.

Mr. COCHRAN.—Objected to as irrelevant and immaterial.

The COURT.—Objection sustained: To which ruling of the Court the defendants then and there excepted and the exception was allowed. [367]

(Witness continuing:) I have had considerable experience in mining. I am now mining on Center Creek. I had mined at other places before I went out to the Grant claim. I know channel wash when I see it.

Q. In sinking holes do you know when you get into what is called the river bed or channel?

A. Yes, this was a river bed.

Q. State whether or not the wash at the bottom of the hole indicated a channel.

Mr. COCHRAN.—Objected to as irrelevant and immaterial.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

(Witness continuing:) That was the first time

(Testimony of Adolph Meyer.)

we struck anything. The only good thing. The next morning the shaft caved in there was only one-inch boards there, timber, and it opened out and dropped down. We fixed the shaft but the water pressure was too strong. We couldn't handle the water. We dug another shaft at that point, a little above, ten feet away, towards the southwest corner stakes. It was a big shaft. I was working at it about a month. We timbered that shaft. There was lots of men working there with me. My partner, Louis Kern, was starting with me to sink the shaft, after that the Russian Malkoff and Henry Kern both worked there.

Q. You speak of your partner, what arrangements did you have with Mr. McCumber about doing that work?

A. I had an arrangement to dig 150 feet, shaft 150 feet, if I struck pay I would get a sublease on 150 feet of the ground for one year. Mr. McCumber was interested in digging that last shaft with me, and also Louis [368] Kern. McCumber employed men to work on that shaft with me and paid them.

Q. Who worked on the last shaft?

A. On the last hole was Kobovich, Louis Kern, Henry Kern, Albert Miller, Markoff and John Alderhall and Herman Fleming. (Continuing:) The men were living at Little Creek roadhouse, while I lived in the red cabin. Defendants' Exhibit 22 is a photograph of the red cabin that I put on the Grant claim and lived in while I was digging those shafts. The machinery we used while sinking

(Testimony of Adolph Meyer.)

the last shaft was a four-inch pump. I took it over from the Wild Goose. The first pump I had was a two-inch pump, and that pump would not go right. I couldn't handle the water. Mr. McCumber got it from the Wild Goose company. It was a sinking pump. I know Louis Stevenson of the Pioneer Mining Company; he was there at the shaft while we were digging it, he was there four or five times; he looked at the gravel and said it was channel. He said the channel run across the claim up towards the railroad track, coming from Anvil.

Q. Did Mr. Stevenson make any objection to your working there? A. No.

Q. On that ground?

A. No, none at all. (Continuing:) We worked on that shaft the last one that we timbered, about a month. We started in on the 10th of March and quit on the 22d of April, 1910.

Q. When you finished work there on that shaft in April, 1910, what did you do with your tools?

A. I left them there in the cabin.

Q. And did you state when you left the cabin?

A. The 12th of May, 1910. (Continuing:) After we finished work [369] down there at the shaft where we were pumping, I did some other work. I put boards on top of the cribbing and covered the shaft all up.

Q. Why did you cover that shaft up?

A. I covered the shaft because I wanted to save it until the next winter so that it wouldn't cave in.

Q. State whether or not it was your intention to

(Testimony of Adolph Meyer.)

go back and work in the same shaft again when you returned to the claim.

A. Yes, it was. (Continuing:) That shaft was 35 feet deep.

Q. Did you get to bedrock?

A. No, I was very close to bedrock, about two or three feet.

Q. What was the character of the dirt, the gravel that you found in the bottom of that shaft?

A. It was red gravel.

Q. And did you pan it? A. Yes.

Q. Did you find gold?

A. Yes, I found the first gold I got at 29 feet. Went down for 29 feet and that was the first pay we struck, from three cents to \$1.50 a pan.

Q. And from the 29-foot level state whether or not it was pay gravel sufficient to take out and mine.

A. It was all pay gravel.

Q. Did you pan from the 29-foot level to the 35-foot level?

A. Yes, I was panning, never found anything for 29 feet.

Q. After you found pay at the 29-foot level, did you pan all the way down until you got to the 35-foot level? A. Yes.

Q. State to the Court what you got. [370]

A. Four pennyweights, I weighed that in the scale, that would be \$2.55 in money. (Continuing:) The biggest pan I had at the 29-foot level was twenty cents. I know positively it was about three feet to bedrock, from the 35-foot level.

(Testimony of Adolph Meyer.)

Q. Now, during the summer, from the time in May when you speak of the 12th of May, up until the fall of 1910, were you on the claim?

A. Yes. I was living where I would be coming out. (Continuing:) I was coming out and was by the ground. I had charge of the claim that summer for Mr. McCumber.

Q. State whether or not you had anything in the cabin that summer. A. Yes.

Q. What did you have there?

A. I had there winter bedding, a bag, an axe and saw, and powder.

Q. And how many times were you in that cabin or on the claim from the 12th of May up until the fall of 1910?

A. Sometimes I was there four or five times a week on the ground. I passed often. I had charge and care of the Grant claim for Mr. McCumber that summer.

Q. When did you go back, if you went back, when did you go back to the claim?

A. The 27th of October.

Q. That was last fall? A. Yes.

Q. How did you go out there, what way?

A. Along the Bessie.

Q. Did you have a team?

A. No, I had a dog team. [371]

Q. What did you do on the claim on the 27th of October, 1910?

A. I was bringing out the stuff and moved that old stove out, and put it in and took the old rusted stove out.

(Testimony of Adolph Meyer.)

Q. How long were you on the claim the 27th of October, on the Grant claim? A. About an hour.

Q. When were you next back on the Grant claim, after the 27th of October?

A. On the 29th of October, I moved out grub. I moved out stove-pipes and building paper. (Continuing:) I was there on the 29th about a couple of hours. At that time I was bringing out stuff for working in the winter, and living there.

Q. Now, when were you next on the claim after the 29th of October, 1910?

A. The next day, the 30th.

Q. What did you do on the 30th?

A. I took a few coal sacks and dishes, a big bucket and small barrel I put them in the house there, the cabin. (Witness continuing:) I was out on the claim on the 30th about three-quarters of an hour. I was on the claim again the next time the 31st of October. I moved out some lumber for fixing up the cabin. That was 2x4 pieces, 1x6, 1x3, 2x8 and two pieces 3x4. I got that lumber at Mr. McCumber's yard. I was next on the claim on the 2d day of November, 1910. I moved out a sack of coal, took it out with my dog team. I was on the claim that day about an hour. I was next on the claim on the 3d of November, 1910. On that day I brought out a windlass drum, cribbing and a cable. The cable for sinking a shaft. The windlass drum also for sinking a shaft. [372]

Q. What was it your intention to do—what were you out on the claim to do?

(Testimony of Adolph Meyer.)

A. Looking after the rim. (Continuing:) It was my idea that the rim was broken down and I wanted to find out where the pay streak ran. I was going to sink a new shaft. I was next on the claim on the 4th of November. I brought out my bedding and the rest of the coal sacks and the big boiler. I came back to town and came back to the claim the next day on the 5th of November. On the 5th of November I brought out my grub. I did some work on the 5th. On the 5th of November I brought out some stove-pipes. I brought out six-inch pipe and caps for the top on the roof and I brought the stove-pipe in and wanted to make it smaller and put it in, that was what I was engaged in doing that day. After that I brought the water and started a fire, and then I was living there.

Q. That was the 5th of November?

A. 5th of November.

Q. When you were fixing your stove-pipe, state whether or not you were on the roof of your cabin.

A. Yes, I was on the roof.

Q. State whether or not anyone passing could have seen you, were you in plain sight, plain sight of people passing there? A. I didn't watch them.

Q. You said you went to bring water, where did you go for water?

A. Down to Moonlight Springs.

Q. State whether or not you slept on the claim the night of the 5th of November, 1910.

A. Yes, I was there.

Q. Where? A. In the red cabin. [373]

(Testimony of Adolph Meyer.)

Q. Where were you on the 6th of November?

A. I was there in the cabin.

Q. Did you do any work on the 6th of November?

A. Brought a little water for breakfast, and after that I went down to the shaft and broke up a few boards.

Q. Which shaft?

A. The new shaft, the last one I dug.

Q. State whether or not that shaft was in the same condition as when you left it. A. No.

Q. What had happened to it in the meantime?

A. That shaft there, 3x4 boards broke in pieces, and where the timber was held in the shaft that was broke in two pieces, 5x6. (Continuing:) I cannot tell you how it was broken. Defendants' Exhibit 23 is a picture of the shaft that we dug in the spring of 1910, where we found the pay. During those days along up to the 5th and 6th of November, I put the building paper on the cabin, on the northeast side. The cabin was broken, and it was too loose for the big storm, and there was too much wind coming in, and I fixed that. I was engaged in carpenter work on the cabin, hammering and driving nails. I did some work down around the shaft in the southwest corner on the 6th of November. On the 6th of November, I fixed up the cabin on the inside and outside and after I went on the roof I started to put on the building paper. The wind was blowing too strong and I put on the paper, it was so cold.

Q. Where did you stay the night of the 6th?

A. In the red cabin.

(Testimony of Adolph Meyer.)

Q. And where were you on the 7th of November?

A. I was on the Grant claim.

Q. What did you do there on the 7th, if anything?
[374]

A. Fixing up the stove and putting building paper on.

Q. State whether or not you were on the Grant claim all day, the day of the 7th of November, 1910.

A. Yes, I was most all day out around the cabin all day.

Q. During any of the days prior to the 7th of November, did you do any work around the old shaft at point 2? A. No, none at all.

Q. During the times you have just mentioned, between the 27th day of October, and the 7th day of November, 1910, did you see Mr. Louis Stevenson in that vicinity? A. No.

Q. Did you see anyone working on or about the 6th or 7th of November, 1910, near by where you were living? A. Yes.

Q. Will you step to the map and point out where they were working?

A. They were working down here, close to the railroad track, five or six hundred feet toward Little Creek.

(Witness continuing:) I started to sink a hole about the 11th or 12th.

Q. Where did you sleep the night of the 7th of November?

A. I slept in the red cabin on the Grant claim.

(Testimony of Adolph Meyer.)

Cross-examination.

(By Mr. COCHRAN.)

I knew Louis Stevenson. When I was moving out in 1909 on the 30th of November, I met him. Theo. Pelitsch and me met Mr. Stevenson on the road. We wanted to go to the Grant claim, the driver lost the way and Mr. Stevenson showed him the way. Theo. Pelitsch is working on Glacier Creek. I don't know [375] where he is now. After we moved the cabin on there in 1909, we went to work there the second of November, sinking a hole near the railroad track. I saw Louis Stevenson after we started work in 1909. Mr. Stevenson came over to where we were working. He asked me if we were prospecting there or what we were doing there. He never told us we were on his ground. He asked me what we were doing there and I told him we were prospecting. He didn't say anything more. He never told me that we were working on Bench claim No. 1 Moonlight. I was a stranger at that time, I did not know anything about Bench No. 1 Moonlight. I moved the cabin on where it is now. I saw stakes but I did not examine them. I did not know there was a stake in the bunch of stakes marked Moonlight. I lived in the cabin from November 30th, 1909. Mr. McCumber showed me the Grant claim stakes and I know where the Grant stakes are. I saw stakes but I did not examine them. There was about four feet of snow there when I went there and you could not see the stakes very well, down where I was working.

Q. Now, on the 29th of October, 1910, you moved

(Testimony of Adolph Meyer.)

some grub, stove-pipe and building paper out to this cabin? A. Yes.

Q. Where did you get the building paper from?

A. McCumber gave it to me, I don't know where he got it from, I never asked him. It was a quarter of a roll. I got the grub from the Northwestern Commercial Company. I paid cash for it. I got the stove-pipe from McCumber. Five lengths of stove-pipe, 6-inch pipe and a stove. I got them from McCumber's house. I did not know where McCumber got the stove or stove-pipe. There was no one with me on the 29th of October. The [376] first time I saw anyone working near the Grant claim was on the 6th of November. There was somebody working there prospecting. I first went out there on the 27th of October. I am not sure what day of the week it was.

Q. How do you know it was the 27th?

A. I figured all of them in my book.

Q. Where is your book?

A. I lost it a long time ago. (Continuing:) It was a little memorandum-book. I was paid wages and I had to pay my freight. McCumber paid one-half and I paid one-half.

Q. You lost that time-book, you say?

A. Yes, that was the time I fell in the shaft.

Q. Have you lost your time-book?

A. Not at that time, that time-book was lost this spring. I fell in the shaft this spring and it fell out. Sometime in March, I lost it.

Q. You know it was the 27th of October because

(Testimony of Adolph Meyer.)

you wrote it down?

A. Yes, I am sure it was the 27th. (Continuing:) Mr. McCumber paid me for my time and I am sure it was the 27th of October, I lost my time-book at Center Creek, where I worked. Mr. McCumber paid me in cash at the postoffice. He paid me on the 5th of November. And the 3d of November he paid me \$1.75 for wages.

Q. How do you remember that your wages were going on from the 3d of November?

A. From the 3d of November my time was going on. (Continuing:) I saw somebody working near there, they had a little boiler there and a small tent, and they were working there.

Q. They were there when you first went out there?

A. I never saw them, I was too busy. [377]

Q. When you first went out there that cabin didn't have a stove in it?

A. That stove was not in the cabin.

Q. And the pipe was down?

A. The pipe was too little on top of the roof, it was tied with four wires and fell over. (Continuing:) It had fallen over sideways. I did not fix the stove and stove-pipe until the 5th of November. I did not sleep in the cabin until I fixed the stove and pipe, after I put up the stove. I could not stay in the cabin until I fixed the stove, it was too cold.

Q. When you first went out there to stay, the first thing you did was to go on the roof and put on the stove-pipe so you could make a fire?

A. No, just took the scissors and made it smaller

(Testimony of Adolph Meyer.)

instead. That pipe was a little bit long and I put, cut the pipe around about that much and after that I made it a little larger and went up and put that stove-pipe up, and tied it up with the wires; that was two o'clock in the afternoon, on the 5th of November.

(Continuing:) I did go up and put up the stove-pipe on the 5th of November. The building paper was there about five days before that. I took the stove out on the 27th of October.

Q. Where did you say you saw those two men working with that boiler?

A. Down toward Little Creek, about four hundred feet from the Grant claim. Four or five hundred feet, something like that.

Q. And you saw them when they started work?

A. Yes. (Continuing:) I know where the stakes of the Grant claim are. I know where the southeasterly line of the Grant claim is. My cabin is on the hill just northeast from where [378] the boys worked. The boys worked across the railroad track, on the other side. The two men were there with a boiler and windlass. I can't tell about the name of the claim. Whether they were working on the Carlson Fraction or not, I don't know. The only thing I know was the Grant claim. I saw the men working there but they never talked to me. I never saw Louis Stevenson out there while the men were working.

Q. Did you start a fire in this cabin on the 5th of November? A. That afternoon.

Q. In the afternoon? A. Yes.

(Testimony of Adolph Meyer.)

Q. And you had a fire from that time on?

A. Yes.

Q. And were living in it? A. Yes.

Q. Did you shovel the snow away from the door so you could get in?

A. There wasn't much snow there.

Q. There wasn't much snow there?

A. No, there wasn't much snow there.

Q. I thought you said there was four feet of snow?

A. That was the year before.

Q. You are now speaking of 1910?

A. Yes. (Continuing:) There was not much snow to speak of on the 5th of November; I was cooking dog feed for my dogs.

Q. Now, don't you know you were not out there until the 20th of November?

A. I know I was there all the time.

Q. Whose dogs did you have? A. My dogs.

Q. Did you have anyone else's dogs? A. No.

[379]

Q. Anybody else out there with you? A. No.

Q. On the 2d of November you moved a sack of coal out there? A. Yes.

Q. Where did you get that sack of coal?

A. My cabin; I got three sacks at home. (Continuing:) I don't remember buying anything at any of the stores at that time besides the grub at the Northwestern Commercial. I did not have to buy a pick and shovel or powder, those were all there. The lumber I got from McCumber. The windlass drum was mine. I bought it in 1907 on Buster Creek.

(Testimony of Adolph Meyer.)

When I got through at Buster Creek I brought it to my cabin in Nome, I took it from there to the Grant claim. At that time I was living next to the Stipek house, in Nome. I got the cable from McCumber. It was old cable. I don't know where McCumber got it. I had it for the last three years. On the 1st of October, 1910, I was longshoring in Nome, working on the docks. While I was in Nome I stayed in my cabin. I am a machinist but I have never worked as a machinist in Nome. I moved the red cabin onto the Grant claim. I was familiar with the boundaries of the Grant claim. When I moved the red cabin on, there was another cabin on there where the two boys had been working. That was away up in the north-east corner. I don't know how deep they sunk their hole. Their cabin was close to their shaft. I mark the place on the map by the letter "Y" where their cabin stood. It was on the Grant claim. I had nothing to do with their cabin. I know the ground that is involved in this lawsuit.

Q. The red cabin you say has not been moved from the place where you put it?

A. No, just the same place.

Q. Why don't you know that cabin has been moved down over near point 9? [380]

A. That cabin where I was was never moved.

(Witness continuing:) There was a tent there near the point 9. It belonged to the two fellows that were working there, Fox and Hersey. There was no other tent or cabin when I went there in 1909. McCumber paid me cash all the time. I did not keep a bank account.

(Testimony of Adolph Meyer.)

Q. You say you were cooking dog feed out on this claim on the 5th of November?

A. Cooking dog feed.

Q. Where did you get the dog feed?

A. Cooking house.

Q. Where did you get it?

A. Northwestern Company.

Q. Who did you buy it from?

A. From the manager, Mr. Hesler, I think, I am not sure.

Q. You claim an interest in this lease with Mr. McCumber, do you? A. Yes.

Q. And you still claim that interest in a lease with McCumber? A. Only the first year.

Q. Have you still got that interest? A. No.

Q. You haven't any interest in this ground?

A. No, I had an interest only for that winter up to the 1st of July.

Q. Have you any interest now?

A. No, not at all, I am working on Center Creek for myself.

Q. *Do expect* to go back to work here?

A. I don't know.

Q. Do you expect to go back to work on the Grant claim?

A. I don't know, I can't tell, maybe and maybe not. [381]

(Witness continuing:) If Mr. McCumber wins the lawsuit, I expect to go back there. If he wins the lawsuit I expect to go back to work for him maybe, and maybe not. It is hard to tell. McCum-

(Testimony of Adolph Meyer.)

ber has never asked me about it and I have never asked him.

Redirect Examination.

(By Mr. GILMORE.)

McCumber never said he would give me any interest in the ground. If I go to work, I would go to work for wages. The first time I ever saw the Pioneer boys working south of the Grant claim in the fall of 1910, was on the 6th of November.

Q. Did you ever see them there before that time?

A. I am not sure. The boiler was there I never was looking for anybody, if anybody was working there. I know nothing at all but what I found out on the 8th of November, after the lawsuit. (Continuing:) While I was out there I was at the Little Creek roadhouse. I had a drink there and went home. I was there many times.

Q. Mr. Meyer, where were you on the 8th of November, 1910?

A. The 8th of November, I was here in town. (Continuing:) I went back to the cabin after that for good. I got a good deal of oil and lumber and went out to see Mr. Pelitsch. After that I was living on the claim to about the 13th day of March. I was working there too, sinking a hole and hunting for the rim. I sank five holes. I did not determine where the rim was. I struck slide. I was there every day up until the 13th of March, 1911, and after that I went up on Center Creek and started work on Center creek.

(Testimony of Adolph Meyer.)

Q. After the 13th of March were you back on the claim again?

A. Every night. (Continuing:) I worked out on Center Creek [382] but returned every night to my cabin. I slept there until the 13th of April and from the 13th of April I was there every week two or three, up until the first of May.

Recross-examination.

(By Mr. COCHRAN.)

There was nobody with me when I went out there to fix up the cabin the first time in 1910, on the 27th of October.

Q. Was there any snow out there for sledding on the 27th of October, 1910?

A. No, not very much sledding on the road, I went up over the tundra the 3d Beach line. (Continuing:) I do not know a little fellow named Fritz. He was not with me. I know a hardware firm by the name of E. W. Carlton & Co. I bought some stuff there but not for my camp. The quarter of a roll of building paper that I took to the Grant claim I got from McCumber.

Q. Now, didn't you buy that at Carlton's Hardware Store yourself and take it to McCumber's?

A. That had nothing to do with it, I used it for my house here in town, that was not for camp. (Continuing:) I am not sure whether Mr. McCumber bought it or myself. I am not sure whether he bought it or not.

Q. What else did you get from Mr. Carlton?

A. I don't know.

(Testimony of Adolph Meyer.)

Q. Building paper, that was so you could fix up your house here in town? A. Yes.

Q. And you bought that the 6th day of December, 1910?

A. I don't know, I don't know for sure.

Q. What did you want that building paper for on your house, if you were living out there on the camp, on the 6th of November? [383]

A. I wanted to move my cabin out in the spring, in March or April, and I wanted to fix it. (Continuing:) I am not sure whether I bought anything else or not, I think I bought some nails.

Q. Did you, at the time you bought the building paper and nails, buy a tin cap for the stove, at the same time, and have it charged?

A. That was not for the Grant claim. (Continuing:) I cannot tell; I bought it, maybe, I am not sure.

Q. Don't you know that it was on the 6th of December that you went out and took the building paper to this claim, the Grant claim, instead of the 6th of November; don't you know that is a fact?

A. I don't know it was a fact. The 6th of December I was living there just one month in the camp-house.

(Witness continuing:) I was living right along after that. The building paper I bought on the 6th of December was for my house here in town. I used it for that in the spring. I saw those boys there the first time on the 6th of November. I saw them there six or eight days on the Moonlight side of the rail-

(Testimony of Adolph Meyer.)

road track. I saw a boiler and a tent, a little tent.

Q. This tin cap for the stove was for the Grant claim, wasn't it? A. It was not.

Q. You didn't use any tin cap on your own cabin?

A. Yes, I did.

Q. The tin cap you bought was for your own cabin here in town?

A. I bought it for the same place. I don't know, I think so, I put it on the house; I don't know for sure. [384]

(Witness continuing:) That was charged to McCumber.

Redirect Examination.

(By Mr. GILMORE.)

I continued to work for Mr. McCumber that winter, after the lawsuit was started.

Q. Were those things that Mr. Cochran has asked you about, that you bought in December at Carlton's store in town, did those things have anything to do with the Grant claim, or were they bought for the Grant claim?

A. No, not for the Grant claim. [385]

Testimony of J. Allison Bruner, for Defendants.

J. ALLISON BRUNER, a witness on behalf of defendants, being first duly sworn, testified as follows:

Direct Examination by Mr. GILMORE.

I hold a general power of attorney for the defendant Pacific Coal & Transportation Company and have since April, 1911. Since becoming their agent I have made efforts to ascertain whether or not the

(Testimony of J. Allison Bruner.)

defendant, Pacific Coal & Transportation Company has the original proofs of forfeiture that were testified to by Mr. Kingsbury. I was not able to ascertain the whereabouts of the same. I do not know where the proofs of forfeiture are. I have made every inquiry. I went to Mr. McCumber, I knew he kept files of papers; I went to the "Nome Nugget" and talked the matter over, and was unable to get copies. I know of my own knowledge that the "Nome News," the paper mentioned by Mr. Kingsbury, is not now in business. The paper has not been published for several years. The defendant was not able to furnish me with the originals. They referred me to Mr. Kingsbury.

Cross-examination.

(By Mr. COCHRAN.)

I do not think there was a statutory agent residing in Nome at the time. John T. Reed and W. H. Bard were statutory agents but they are not residing in Nome at this time, and were not here when I made the inquiry. They have not been in Nome since I have been appointed agent of the company. Mr. Bard is in Portland, and Mr. Reed is in Seattle. Mr. Bard has not been here since 1909 and Mr. Reed left in 1909. That is my recollection. [386]

Testimony of M. D. McCumber, for Defendants.

M. D. McCUMBER, a witness on behalf of defendants, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GILMORE,)

My name is Menzo D. McCumber; I am one of the

(Testimony of M. D. McCumber.)

defendants in this action. I know A. G. Kingsbury. I have made inquiry in this vicinity with reference to ascertaining about the original copies of proof of forfeiture, testified to by Mr. Kingsbury. I made inquiry from Mr. Kingsbury himself, the "Nome Nugget," who were the successors of the "Nome News," the Arctic Brotherhood, the Pioneers of Alaska, the Eagles, R. W. J. Reed and two or three others. I have been in Nome since 1900. I was here in 1902. I knew a paper called the "Nome News." H. G. Steel was the publisher. I knew several of the boys that were engaged with him, W. B. Kurtz, George Maynard and J. W. Wright. They are all outside except George Maynard. Maynard is now on the "Nome Nugget." I made inquiry with reference to the notices in the "News" from Mr. Maynard. I have been unable to obtain any copies and I was not able to obtain the original forfeiture notice and proofs of forfeiture.

Mr. GILMORE.—I now offer the following evidence from the deposition of Mr. A. G. Kingsbury, commencing on page 30. It was omitted at the time of the former reading.

The COURT.—You may proceed. [387]

Deposition of A. G. Kingsbury.

Q. Now, in the year 1902, state whether or not on behalf of the Pacific Coal & Transportation Company, you did anything else or caused anything to be done with reference to the forfeiture of Mr. Grant, or any of his associates.

A. I advertised them out in the local paper.

(Deposition of A. G. Kingsbury.)

Q. What paper?

A. The "News." (Continuing:) I caused to be published a forfeiture notice. I have not a copy of that notice in my possession. The defendant, Pacific Coal & Transportation Company has it, or should have it. It is hard to tell whether they have or not. I have been unable to get you a copy of it. I do not remember exactly the time I advertised Grant and his associates out. I published the forfeiture notice the regulation time, three months. It was addressed to W. N. Grant and assigns and copartners, and was signed by the Pacific Coal & Transportation Company. I drew the notice up myself, copying the forms that I found in the paper, but inserting the proper names and dates. The notice was in the usual form of such forfeiture notices published at that time in the papers. It was published in the "News," a paper published in Nome. It was the nearest point to the claim where a paper was published. I advertised them out for the years 1901 and 1900. Mr. Grant or his assigns never proffered or offered the defendant, Pacific Coal & Transportation Company, their proportionate share of the expenditures, neither during the ninety days succeeding the notice or at any other time, and by virtue of the forfeiture notice so published the defendant, Pacific Coal & Transportation Company, claimed the interests of its co-owners in the Grant claim, aside from the deed that they already had. [388]

Mr. GILMORE.—I now offer in evidence certified copy of proof of labor for the year 1900 on the Grant

claim, signed by A. G. Kingsbury, bearing date the 15th day of September, 1900.

The COURT.—It may be received and marked Defendants' Exhibit 40; said exhibit being as follows:

Defendants' Exhibit No. 40.

2660

PROOF OF LABOR.

Nome, Alaska, September 15th, 1900.

Before me, the officer before whom the oath hereinafter referred to was taken, personally appeared A. G. Kingsbury for the Corwin Trading Company, who, being duly sworn first, says that the following described labor and work of sluicing, sinking shafts, ditching and otherwise mining, preparing to mine and improving the hereinafter named and described mining claims and being not less than one hundred dollars (\$100.00) worth of labor or improvements were performed and made upon each one of the following named claims: #1 on western base of Anvil Mountain second bench from Discovery on Anvil Creek and near the head of Moonlight Creek. #1 East end of American Gulch, second bench from #4 on Anvil Creek. The "Ingersoll" claim located by E. L. Howard; same being second bench on Northwestern side of #9 on Anvil Creek. #5 Twin Mountain Creek. #9 above on Boulder Creek. #2 on Lookout Creek. #1 North fork of American Gulch. #2 below on Butterfield Canyon. #1 Webber Gulch. #3 Jorosa Creek. #1 Miller Gulch. #4 on Bangor Creek. #1 Pine Tree claim Snake River. The E. L. Howard claim on Nome River,

about three [389] miles above its mouth, located by E. L. Howard. All above-described claims, not otherwise specified were located by Woodford N. Grant.

All above-named claims are situated in Nome Mining District, Alaska. Such expenditure and labor was made and performed by the Corwin Trading Company during the year above written for the purpose of holding said claim and extracting the minerals therefrom.

A. G. KINGSBURY.

Subscribed and sworn to, before me, this 15th day of Sept., 1900.

[Notarial Seal]

A. E. WILLIAMS,

Notary Public in and for the District of Alaska.

Filed for record 2 P. M. Sept. 15th, 1900.

R. N. STEVENS,

Recorder.

Frank W. Swanton,

Deputy.

(Recorded Vol. 54, page 181.)

Mr. GILMORE.—I now offer in evidence certified copy of proof of labor for the year 1901 on the Grant claim, bearing date the 7th day of October, 1901, Pacific Coal & Transportation Company by A. G. Kingsbury. I offer it for the purpose of showing a *bona fide* claim on behalf of the defendant company to the ground in controversy.

Mr. COCHRAN.—I object to the alleged proof of labor on the ground that it is incompetent and immaterial for any purpose whatever; second, because it does not anywhere describe the Grant claim, but

refers to the claim as No. 1 Bench Moonlight Creek, there being no such claim under the evidence of this case being identical with the Grant [390] claim; third, that it does not state whom the work was performed for; fourth, that the alleged proof of labor is signed Pacific Coal & Trans. Co., per A. G. Kingsbury.

Mr. GILMORE.—I am not offering it, as your Honor is well aware, as proof that he did any work out there; he testified himself that he did and told the names of the men that he had. I am offering it simply as a badge of good faith, as a fact tending to show the *bona fides* of the defendant's claim to the ground. The fact that he calls it Bench No. 1 does not make any difference. He testified himself, that the Grant claim was known by three or four names.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

Mr. GILMORE.—I would like to have the instrument marked for identification.

The COURT.—It may be marked Defendants' Exhibit 41 for Identification; said exhibit being as follows:

Defendants' Exhibit No. 41.

12414

PROOF OF LABOR.

1901 Nome, Alaska, Oct. 7th.

KNOW ALL MEN BY THESE PRESENTS,
That I, the undersigned, have done and caused to be done labor on the following named [391] placer claims during the present season of 1901, An amount

of labor on each and every claim of not less than one hundred dollars Fully complying with the law in reference to annual assessment work on placer mining ground.

The nine placer claims lying and being situate about $\frac{3}{4}$ ths of a mile north of Bering Sea and about three miles East of Fort Davis; as described and recorded in Cape Nome Mining District, District of Alaska; Book 86, Pages 440 to 444 inclusive. Also #5 Twin Mountain Creek; #2 Butterfield Canyon, #1 bench Moonlight Creek, #9 above on Boulder Creek—#4 below on Bangor Creek, #1 North Fork American Gulch & #1 East end of American Gulch, #3 Jorosa Creek, #1 Miller Gulch, #1 Webber Gulch; #2 Lookout Creek The “Ingersoll” which is 2d bench on North western side of #9 below on Anvil Creek.

PACIFIC COAL AND TRANSPORTA-
TION CO.

Per A. G. KINGSBURY. ()

United States of America,
District of Alaska,—ss.

Subscribed and sworn to before me this 7th day of October, A. D. 1901.

[Notarial Seal]

L. THOMPSON,

Notary Public in and for the District of Alaska.

Filed for record, 10:25 A. M. Oct. 7, 1901.

T. M. REED,

Recorder.

W. W. Sale,

Deputy.

(Recorded Vol. 87, page 307.)

Mr. GILMORE.—I now offer, if the Court please, certified copy of the proof of labor on No. 1 Bench on Moonlight, as it is called, for the year 1902, bearing date the 23d of [392] October, 1902, signed by A. G. Kingsbury, for the same purpose of showing the *bona fides* of the defendants of their claim to the ground in controversy.

Mr. COCHRAN.—Objected to on the ground that it is wholly incompetent and immaterial.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

Mr. GILMORE.—I would like to have it marked for identification.

The COURT.—It may be marked Defendants' Exhibit 42 for Identification; said exhibit being as follows:

Defendants' Exhibit No. 42.

#18173.

United States of America.

District of Alaska,—ss.

Know All Men By These Presents, That I, the undersigned have permormed and caused to be performed labor on the following described placer claims located in Cape Nome Mining District, District of Alaska, during this season of 1902, an amount of labor on each and every claim of exceeding one hundred dollars in value, thereby fully complying with the law in reference to annual assessment work on placer mining ground; No. 5 Twin Mountain Creek. No. 2 Butterfield Canyon; No. 9 above on Boulder Creek: No. 4 below on Bangor; No.

1 bench on Moonlight Creek: No. 3 Jerosa Creek: No. 1 Miller Gulch: No. 1 Webber Gulch: No. 2 Lookout Creek: No. 1 North Fork of American Gulch and No. 1 East end of American Gulch: The "Ingersol" which is second bench on Northwestern side of No. 9 below on Anvil Creek.

A. G. KINGSBURY. [393]

Subscribed and sworn to before me this 23d day of October, A. D. 1902.

[Notarial Seal]

J. SULLIVAN,

Notary Public for Alaska.

Filed for record at the request of A. G. Kingsbury at 12:17 P. M., October 23d, 1902.

T. M. REED,

Recorder.

W. W. Sale,

Deputy.

(Recorded in Vol. 100, page 453.)

Mr. GILMORE.—We now offer in evidence certified copy proof of labor for the year 1903 on the Grant claim, bearing date the 14th day of October, 1903, signed by B. G. Simmons and J. Bunt.

Mr. COCHRAN.—We object to the offer of the alleged proof of labor for the year 1903 on the ground that it is wholly irrelevant and immaterial, no reference being made to the claim except Grout claim on Moonlight. It does not say Grant, this is Grout.

Mr. GILMORE.—It is very evident that the letters "an" in the word have been miscopied by the recorder as "ou," I should like to have the instrument

marked for identification and I will offer proof later.

The COURT.—It may be marked Defendants' Exhibit 43 for Identification; said exhibit being as follows: [394]

Defendants' Exhibit No. 43.

“#24038 PROOF OF LABOR.

United States of America,
District of Alaska,
Second Division,—ss.

Before me, the officer before whom the oath hereinafter referred to was taken, personally appeared B. G. Simmons and J. Bunt, who, being first duly sworn, says that the following described work and labor, viz.: Sinking Shafts and running cuts &c. on the following Placer Mining Claim, to-wit:

No. 1 North Fork American Gulch or Creek.

No. 1 East End American Gulch or Creek.

No. 1 on Lookout Creek.

No. 1 on Lynn Creek.

Grout Claim on Moonlight Creek.

2nd tier Bench opposite No. 9 Below on Anvil Creek, Right Limit, and being not less than \$600.00 worth of labor or improvements, were performed and made upon the above-mentioned claims situated in the Cape Nome Recording and Mining District of Northwestern Alaska; said work was done between the first day of August and the 13th day of October, 1903.

Such expenditure was made at the expense of Pacific Coal and Transportation Company owners of

said claims, for the purpose of holding said claims.

B. G. SIMMONS.

J. BUNT.

Subscribed and sworn to before me, this 14th day of October, 1903.

[Notarial Seal]

W. H. BARD,

Notary Public in and for the District of Alaska.

Filed Oct. 27, 1903, 1:50 P. M., request of W. H. Bard.

T. M. REED,

Recorder.

W. W. Sale,

Deputy.

(Recorded Vol. 128, page 118.) [395]

Testimony of Geo. D. Schofield, for Defendants.

GEORGE D. SCHOFIELD, a witness on behalf of defendants, being first duly sworn, testified as follows:

My name is George D. Schofield. I am a lawyer. I am now U. S. Commissioner and ex-officio Recorder at Nome. I have held the position since October, a year ago and as such recorder I have the care and custody of the records of the Cape Nome Mining District. I am not familiar with the claims in the vicinity of Moonlight Springs.

Q. Did you ever hear of a claim in that locality called the Grout claim?

A. I don't recall ever having heard of a claim of that name. (Witness continuing:) I have looked the records up with reference to some claims in that vicinity. I have examined Defendants' Exhibit No.

(Testimony of Geo. D. Schofield.)

43. I looked at it just a moment ago. I certified it as commissioner, personally. I could not say whether or not there is an error in it in copying the record.

Q. Why was the word underscored when you made the certified copy?

A. Because the record so shows the original record undoubtedly, it wouldn't be underscored otherwise in that certified copy.

Q. What does the underscoring of the word in the original record in your office mean ordinarily?

A. That the party transcribing the record doubts the correctness of the name. [396]

Mr. GILMORE.—I now offer certified copy of proof of labor for the year 1906 on the Grant claim, signed by W. H. Bard and bearing date October 13th.

The COURT.—It may be received in evidence and marked Defendants' Exhibit 44; said exhibit being as follows:

Defendants' Exhibit No. 44.

#39192.

PROOF OF ANNUAL LABOR.

United States of America,
District of Alaska,—ss.

W. H. Bard, being first duly sworn, upon his oath, says that at least \$100.00 worth of work, consisting of operating the claim by mining and sluicing was performed, or made upon the placer mining claim known as the *G R A N T* Claim situate on Moonlight Creek, a bench claim off Number One Moonlight

Creek situate in the Cape Nome Mining District, District of Alaska, during the year ending December 31st, 1906. Such expenditure was made by, (or at the expense of) PACIFIC COAL & TRANSPORTATION COMPANY, a corporation, owner of said claim, for the purpose of holding said claim.

W. H. BARD.

Subscribed and sworn to before me this 13th day of October, 1906.

[Notarial Seal]

JOHN T. REED,

Notary Public in and for the District of Alaska, Residing at Nome.

Filed for record Dec. 22, 1906, 1:50 P. M. Request of Eugene Sperry.

F. E. FULLER,

Recorder.

F. R. Cowden,

Deputy.

(Recorded in Vol. 175, page 51.) [397]

Mr. GILMORE.—I now offer in evidence certified copy proof of annual labor, bearing date June 11, 1907, signed by Eugene Sperry.

The COURT.—It may be admitted and marked Defendants' Exhibit 45; said exhibit being as follows:

Defendants' Exhibit No. 45.

#44882.

PROOF OF ANNUAL LABOR.

United States of America,
District of Alaska,
Second Division,—ss.

Eugene Sperry, being first duly sworn, upon his oath, says, that at least one hundred dollars' worth of work, consisting, among other work, of sinking numerous holes to bed-rock, by means of a gasoline drill upon each of the hereinafter mentioned placer mining claims, was performed or made, upon the following described placer mining claims, to-wit:

J. T. R. Moonlight Number one (1) or Grant
N. P. Claim, *lying on the southern base of Anvil Mountain, located by Woodford N. Grant.*

Number Two (2) Lookout Creek, and

Number One (1) American Gulch, North Fork.

All situate in the Cape Nome mining and recording District, District of Alaska, during the year ending December 31st, A. D. 1907.

J. T. R. Such expenditure was made by or at the
N. P. instance of Pacific Coal and Transportation Company, a corporation, owner of all of the aforesaid claims, for the purpose of holding said claims according to law, And said work was performed on each of said claims by deponent and under his direction representing the Sperry Mining Co, as lessee to comply with the terms of a lease [398] from said Pacific Coal and Transportation Co., and

was performed at various times from January to June 1907.

EUGENE SPERRY.

Subscribed and sworn to before me, this 11th day of June, A. D. 1907.

[Notarial Seal] JOHN T. REED,
Notary Public in and for the District of Alaska, Re-
siding at Nome.

Recorded Mar. 28, 1908, 10:00 A. M., at request of
John T. Reed.

F. E. FULLER,
Recorder.
F. R. Cowden,
Deputy.

(Recorded Vol. 185, page 45.)

Mr. GILMORE.—I now offer in evidence certified
copy proof of annual labor on Grant Claim, bearing
date January 2d, 1909, signed by B. E. Hersey and
S. Lynd Fox.

The COURT.—It may be received in evidence and
marked Defendants' Exhibit 46; said exhibit being
as follows:

Defendants' Exhibit No. 46.

#47570.

PROOF OF ANNUAL LABOR.

United States of America,
District of Alaska,
Second Division,—ss.

B. E. Hersey and S. Lynd Fox, being first duly
sworn, says:

That during the year ending December 31, 1908, at

least one hundred dollars' worth of labor was performed and improvements made on or for the benefit and development of BENCH CLAIM NUMBER ONE (1) situate at the westerly base of Anvil [399] Mountain, also known as *an* called the "MOONLIGHT" or "Grant" Claim being the same claim located by W. N. Grant on January 9, 1899, Notice of location of which said claim is recorded in the office of the Recorder of the Cape Nome Mining and Recording District District of Alaska, in Book 3 at page 59, which said claim is situate in the Cape Nome Mining and Recording District, District of Alaska;

That fourteen days' work was done on said claim consisting of sinking a shaft twenty-four feet deep, and about 8x8 feet wide and long for the first eighteen (18) feet, which work was done through frozen ground; and about 4x5 feet wide and long for the remaining six (6) feet, which six (6) feet was through slide rock, requiring blasting.

That said work was done on the following dates, to-wit: December 8-9-10-11-12-13-14-15-16-17-18-19-20- and 21, 1908, and was done by affiants, B. E. Hersey and S. Lynd Fox, and was of the value of more than one hundred dollars;

That said work was done and improvements were made at the instance of M. D. McCumber, lessee of the owner of said claim, the Pacific Coal and Transportation Company, a corporation, and was done for the benefit of the said Pacific Coal & Transportation Company the said owner, in accordance with the terms and conditions of a lease from said Pacific

Coal & Transportation Company to said M. D. McCumber, dated August 15, 1908.

That the actual amount paid for said work and improvements was one hundred & fifty dollars, and that said amount was paid [400] by said M. D. McCumber who is lessee of the owner of said claim.

(Signed) B. E. HERSEY.

(Signed) S. LYND FOX.

Subscribed and sworn to before me this 2d day of January, 1909.

[Notarial Seal]

JOHN T. REED,

Notary Public in and for the District of Alaska, Residing at Nome, Alaska.

Recorded January 6, 1909, 11:50 A. M., at request of John T. Reed.

(Recorded Vol. 185, page 461.)

F. E. FULLER,

Recorder.

F. R. Cowden,

Deputy.

Mr. GILMORE.—We next offer in evidence certified copy of annual labor for the year 1909 on the Grant claim, bearing date October 28, 1909, signed by B. E. Hersey.

The COURT.—It may be received in evidence and marked Defendants' Exhibit 47; said exhibit being as follows:

Defendants' Exhibit No. 47.

#50201 PROOF OF ANNUAL LABOR.

United States of America,
District of Alaska,
Second Division,—ss.

B. E. Hersey, being duly sworn says:

That during the year ending December 31, 1909, at least [401] one hundred (\$100.00) dollars' worth of labor was performed and improvements made on or for the benefit and development of that certain placer mining claim and ground, situate in the Cape Nome Mining and Recording District, District of Alaska, known as and called Bench Claim *NUMBER ONE (1) AT WESTERN BASE OF ANVIL MOUNTAIN*, also known as and called "*MOONLIGHT*" or "*GRANT*" claim being the same claim located by W. N. Grant, on January 9, 1899, notice of location of which said claim is recorded in the office of the Recorder of the Cape Nome Mining and Recording District, District of Alaska, in book 3, page 59,

That two hundred and twenty (220) days work was done on said claim consisting of sinking about sixty (60) feet in a shaft through solid rock. That said work was done from January 1, 1909, to April 20, 1909, both dates inclusive, and work was done continuously between those dates, and was done by deponent and one, S. Lynde Fox, and was of the value of upwards of one thousand (\$1,000.00) dollars.

That said work was done and improvements made

at the instance of M. D. McCumber, lessee of the owner of the said claim, the Pacific Coal and Transportation Company, a corporation, under and by virtue of a lease from the said company, as lessor, to said McCumber, as lessee; by the terms of which lease, the said McCumber was to do the assessment work for the year 1909, and payment for said work was made to deponent by said McCumber, and the work was done for the benefit and development of said claim, and was done for the benefit of the owner of said claim, the Pacific Coal and Transportation Company, a corporation.

B. E. HERSEY.

Subscribed and sworn to before me this 28th day of October, 1909.

[Notarial Seal]

M. L. PETERSON,

Notary in and for the District of Alaska, Residing at Nome, Alaska. [402]

Recorded October 29, 1909, 2:10 P. M. at request of John T. Reed.

J. F. HOBBS,

Recorder.

F. R. Cowden,

Deputy.

(Recorded in Vol. 187, page 340.)

Mr. GILMORE.—I next offer proof of annual labor for the year 1910, signed and sworn to by M. D. McCumber, and bearing date the 27th of March, 1911.

The COURT.—It may be received in evidence and marked Defendants' Exhibit 48; said exhibit being as follows:

Defendants' Exhibit No. 48.

#53709.

PROOF OF ANNUAL LABOR.

United States of America,
District of Alaska,—ss.

Menzo D. McCumber being first duly sworn, says:

That during the year ending December 31, 1910, at least one hundred dollars worth of labor was performed and improvements made on or for the benefit and development of the *No. 1 BENCH*, otherwise known as "MOONLIGHT" or GRANT Claim placer mining claim, situate on east fork of Moonlight Creek, east of and adjoining "Moonlight" claim otherwise known as the Robert Lyng claim, in the Cape Nome Recording District, District of Alaska;

That ——— days' work was done on said claim, consisting of one shaft 4x6 ft. and 26 ft. deep; situated about 20 ft. from westerly line and about 50 ft. from south line of said claim. Also one shaft, 4x6 ft. and 34 ft. deep situated about 30 ft. [403] from west line and 40 ft. from south line of said claim.

That there was paid for labor in doing said work the sum of \$601.00, for rent of pumps, boilers, etc., the sum of \$139.00. For Groceries, Board and lodging, coal, freight, etc., the sum of \$889.90. That the total thereof was of the value of \$1629.90 Dollars.

That said labor was done and expenses incurred between January 1st, 1910, and the 1st of May, 1910.

That said work was done and improvements were made at the instance of the Pacific Coal and Trans-

portation Company, the owner of said claim, by affiant, its lessee.

That the actual amount paid for said work and improvements was \$1629.90 Dollars, and that said amount was paid by affiant who is lessee of the owners of said claim.

MENZO D. McCUMBER.

Subscribed and sworn to before me this 27th day of March, 1911.

[Notarial Seal] J. ALLISON BRUNER,
Notary Public in and for the District of Alaska, Residing at Nome, Alaska.

Recorded Mar. 28, 1911, 10:50 A. M., at request of J. A. Bruner.

GEO. D. SCHOFIELD,
Recorder.
W. W. Sale,
Deputy.

(Recorded in Vol. 192, page 413.)

Mr. GILMORE.—I next offer in evidence, if the Court please, certified copy of amended water right location notice, bearing date July 17, 1905, by Pacific Coal & Transportation Company, by W. H. Bard, Agent. It is for the purpose of showing dominion of the claim by defendants, over the water as well as other parts of the surface in that locality of the Grant claim. [404]

Mr. COCHRAN.—We object to the offer as wholly immaterial for any purpose.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

Mr. GILMORE.—We should like to have it marked for identification.

The COURT.—It may be marked Defendants' Exhibit 49 for Identification; said Exhibit 49 being as follows:

Defendants' Exhibit No. 49.

#31124.

AMENDED WATER RIGHT.

Notice is hereby Given.

That the undersigned, a corporation incorporated under the State law of Maine, with articles of incorporation duly recorded for the purposes of doing business in the District of Alaska, having complied with all the requirements of the Revised Statutes of the United States, and with the local customs, laws, rules and regulations of the Cape Nome Mining District, District of Alaska, by right of prior right of appropriation and priority of possession, do hereby claim, locate and appropriate all the water running in its natural courses on through or by the claim known as the Grant Claim Situate on Moonlight Creek in the Cape Nome Recording Precinct District of Alaska, Starting at the Northerly and Easterly part of said claim and running in a south-Easterly direction to the outlet which is on the Southwest corner of said claim, such water is to be conducted by ditch, pipe and under ground tunnels to place of outlet, that the ground through which said water way runs belongs to [405] the locator of this water right said water right appropriates all the water upon the surface and also all water be-

neath said surface in the gravel and bedrock as well.

Located and appropriated first location September 2d, 1902. Recorded 17th day of September, 1902.

Amended location made this 17th day of July, 1905.

The party here to do not loose any of its prior rights by making this amended location.

PACIFIC COAL & TRANSPORTATION
COMPANY,

By W. H. BARD,
Agent.

Witness:

EUGENE SPERRY.

Filed for record at request of W. H. Bard July, 18, 1905, at 55 min. past 11 o'clock A. M.

T. M. REED,
Recorder.

W. W. SALE,
Deputy.

(Recorded in Vol. 126, page 202.) [406]

Testimony of Louis Kern, for Defendants.

LOUIS KERN, a witness on behalf of defendants, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GILMORE.)

My name is Louis Kern. I am a brewer and a miner. I have mined in the Nome District. I know the Grant claim out near Moonlight. I worked on that claim from the 12th day of February to about the 5th of May, 1910, with Adolph Meyer. I attended

(Testimony of Louis Kern.)

to the boiler and to the pumps, as engineer. While I was working on the Grant claim I lived in the Red cabin. We worked in the southwest corner of the Grant claim, about fifty or sixty feet from the corner, right near the line. We dug a 3½x5 foot shaft. about 27 feet deep, or a little over, I don't know exactly. I worked on the first shaft that was dug. It was a 4x8 shaft. We had a pumping station down in it, a stationary pump. We had an Emerson pump. We first had a steam pump. We had two pumps in the shaft all the time. One was a stationary pump and the other was a steam pump. It was thawed ground and we had to pump because there was too much water to work without pumping. We pumped day and night. The second shaft was about 35 feet deep. No one molested us while we were working there.

Q. Did the Pioneer Mining Company, or anyone on its behalf, make any claim of the ground while you were there?

A. Not while we were there. I never knew Mr. Stevenson, the first time I knew Stevenson was here. (Continuing:) I do not remember seeing him on the ground. I lived in the red cabin on the Grant claim in the spring of 1910, from the 12th of January to the 5th of May. [407]

Cross-examination.

(By Mr. COCHRAN.)

I was pumping out there. I knew that the Pioneer Company was pumping on the Portland Bench.

(Testimony of Louis Kern.)

I know when they quit working on the Portland Bench.

Q. And you were drowned out when they quit working on the Portland?

A. No, we weren't drowned out, our pump broke.

Q. That was the reason you quit because you were drowned out?

A. No, we didn't quit on that account, our pump broke.

Redirect Examination.

(By Mr. GILMORE.)

Q. Mr. Kern, do you know what followed, if anything, the pumping that you were doing there out on the Moonlight Springs?

A. It had a little effect, the springs was out, we hauled our water from there and the Moonlight Springs was out.

Q. What do you mean by "out," disappeared, couldn't get water?

A. Couldn't get any water any more.

Q. Were you down in the bottom of the shaft?

A. Yes, I was down there fixing the pump and cable.

Q. Do you know from your observations there, whether or not the work done there developed the channel? A. It looked like a channel.

Recross-examination.

(By Mr. COCHRAN.)

We had an engineer from the Portland Bench. When our [408] pump broke we fixed it up. We

(Testimony of Louis Kern.)

couldn't handle the water when we had the pump and boiler.

Redirect Examination.

(By Mr. GILMORE.)

I have had experience as an engineer. I worked in Harrisburg, Pa., in 1881, and attended fifty-ton boilers.

Q. Are you familiar with boilers?

A. Yes, that is my trade.

Q. If your pump had not broken on you out there, could you from your experience—state whether or not you could have handled the water.

A. I could handle it when I had the right pump. We couldn't get it. We had the right kind of a pump but the valves were out of order. The pump was not in good order. We had to close down a couple of days. [409]

Testimony of Henry Kern, for Defendants.

HENRY KERN, a witness on behalf of defendants, being first duly sworn, testified as follows:

Direct Examination by Mr. GILMORE.

My name is Henry Kern. My business has been brewer and mining. I am a brother of Louis Kern who has just testified. I have been in the Nome District since the 4th of July, 1901. I know the Grant claim in the vicinity of Moonlight Springs. I got acquainted with it in the year 1904 and 5. I worked on the Grant claim in 1910, from the last of March until the 27th or 28th of April. I worked for Mr. McCumber and Adolph Meyer. I worked

(Testimony of Henry Kern.)

on top, handling a windlass, and also did some other work besides. We worked on the southwesterly corner about fifty feet to the north and near the line, sinking a shaft. My brother, Louis Kern, Adolph Meyer and Albert Miller worked there at the time I did. I worked on both shafts dug there. The machinery we used in sinking those shafts were three boilers and four pumps altogether. We used one two-inch pump, steam pump, and one four-inch steam pump, three-inch discharge, and one steam, a hanging pump, and then an Emerson pump. The first shaft was 27 feet, the second one about 34 or 35 feet deep. I worked on the surface. I observed the character of the gravel that was extracted. While we were operating those pumps I observed that the Moonlight Springs stopped running. While we were pumping the Moonlight Springs Water Company had trouble, they couldn't get any water from their springs. The character of the gravel taken from the 35-foot shaft was what I would call ground up quartz, a fine gravel, natural channel wash. There were coarse boulders and bog rocks in it. While I worked there I lived in Nome. I don't remember exactly the number of [410] days I worked there, I think nineteen or twenty days.

Q. Now, state whether or not anyone else was on any part of the Grant claim other than you men that were working there in the southwest corner, while you were there. A. No, sir, not anybody.

Q. Did the Pioneer Mining Company or anyone on its behalf, make any claim to you or to anyone

(Testimony of Henry Kern.)

else, in your presence, that they owned the Grant claim or the ground you were working, during the time you were working?

A. No, sir, not while I was there. (Continuing:) I have no interest in the result of the lawsuit. I was paid in full by Mr. McCumber. I first knew the Grant claim in 1904 and 5. I passed by there in 1904 and 5. Mr. Muther was working the ground. I knew him. He had a pan and was panning.

Cross-examination.

(By Mr. COCHRAN.)

I do not know where Moonlight Bench claim No. 1 was while I was working up there. I was in the red cabin several times while I worked there, but I slept in Nome. I might have seen some stakes near the cabin, but I didn't pay any attention to them. I knew where the Grant claim was, I did not know exactly where the boundaries were. I knew that the red cabin was on the Grant claim. The stakes of the Grant claim were pointed out to me from the cabin. I knew where the Grant claim stakes were near where we were sinking the shaft. I didn't pay any attention to the others. I never went up to the other stakes. I know where the Portland Bench claim is now. I didn't know whether the pumping of the Portland Bench claim in 1909 dried up the Moonlight Springs or not. I knew that the Pioneer [411] was pumping on the Portland Bench while we were working on the Grant claim. I don't know whether the ground is thawed between the Portland Bench and the Grant claim or not. The ground is

(Testimony of Henry Kern.)

covered with willows but I don't know whether it is frozen or not. I knew Mr. Stevenson by sight for quite a number of years, but I did not know him by name. I worked there for about twenty days for Mr. McCumber. The Grant claim is about four miles from Nome, somewhere around that. [412]

Testimony of Albert Miller, for Defendants.

ALBERT MILLER, a witness on behalf of defendants, being first duly sworn, testified as follows:

Direct Examination by Mr. GILMORE:

My name is Albert Miller. My business is mining. I have been a miner for ten years and have mined in the Nome vicinity for about six years. I was four years in the Council district. I know the Grant claim near Moonlight Springs. I got acquainted with it in 1910. I performed labor on the Grant claim, for Mr. McCumber, in March and April, 1910, sinking shafts. The first shaft was 27 feet deep and the second one 35 feet. I worked down in the hole. The character of the ground at the bottom of the 35-foot shaft was chicken-feed gravel and big boulders. I have had a large experience in digging shafts. Have dug a great many in different parts of the Nome District.

Q. From your experience as a miner and the experience you had in that shaft, are you able to state whether or not that shaft was in what is considered an old channel?

Mr. COCHRAN.—Objected to as leading and upon the further ground that the witness has not shown himself qualified to answer.

(Testimony of Albert Miller.)

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

(Witness continuing:) I did not do any panning in the shaft. We used three boilers and four pumps in our work. There were five other men who worked there while I was there, they were Henry Kern, Louis Kern, Adolph Meyer, Williams, and two Russians; I don't know their names. While I worked there I stayed at Little Creek. [413] There was a red cabin on the Grant claim while I was working there, near the railroad track. I have not been on the Grant claim recently. I know where the ground in controversy in this lawsuit is. I know it since the suit was commenced, but not before. At the time I worked on the Grant claim there was no one else in possession of the Grant claim, or any part of it, other than the men that were working with me. I know where the boundaries of the Grant claim are. There was no one within those boundaries other than myself and the men that were working with me at the time I worked there. I know where the southwest corner is. We were working from eighty to one hundred feet from that corner. It was close to the figure "2" on the map, Defendants' Exhibit 11. I know Mr. Stevenson. I knew him at the time I worked there. I have worked for him. I worked for the Pioneer Mining Company when Mr. Charlie Johnson was manager. I worked for the Pioneer Mining Company both before and after I worked on the Grant claim. I did not see Mr. Stevenson on the

(Testimony of Albert Miller.)

Grant claim while I was there. I worked down below in the shaft. I have no interest in the result of the lawsuit.

Cross-examination.

(By Mr. COCHRAN.)

Q. How did you know there was nobody else living on the Grant claim or not.

A. There was nobody at that time.

Q. Nobody when you were there?

A. No, sir. [414]

Testimony of James Walter Charles, for Defendants.

JAMES WALTER CHARLES, a witness on behalf of defendants, being first duly sworn, testified as follows:

Direct Examination by Mr. GILMORE.

My name is James Walter Charles. My business is mining and prospecting. I am interested in some mining claims in the vicinity of Moonlight and Anvil Mountain, northeast of Nome. I know the Grant claim. I first knew it in 1904 and 5. Mr. Muther was working on the claim then. He was working in a hole I should judge about twenty feet east of the railroad track, close to the dam. There were cabins on the Grant claim in 1904 and 5. They were east of the railroad track about thirty feet and about twenty feet from the dam northeasterly. I was on the Grant claim during the summer of 1911. I worked on the Grant claim at that time, in June.

Q. When did you go to the Grant claim?

A. The first of May, 1911.

Mr. COCHRAN.—Objected to, if the Court please,

(Testimony of James Walter Charles.)

and move to have the answer stricken out as being wholly irrelevant and immaterial.

Mr. GILMORE.—It is for the purpose of showing, if the Court please, that Mr. Charles succeeded Adolph Meyer and lived there during the summer of 1911, and that we had possession of the disputed area not only at the time the suit was started, but since.

Mr. COCHRAN.—I don't see how it could affect the right of the plaintiff in this case.

The COURT.—I think you have to produce some more proof; I can't see that it has anything to do with it. It may be stricken. [415]

To which ruling of the Court the defendants then and there excepted and the exception was allowed.

Mr. GILMORE.—I offer to prove by the witness that he resided on the claim for Mr. McCumber, as an employee of Mr. McCumber, from the first day of May, 1911, until sometime in the month of July, until the 7th of July, 1911. That during that time he lived upon the ground in controversy in this lawsuit and during the greater part of the time was engaged in work thereon. We offer it for the purpose of showing actual physical possession of the ground in controversy as occupied by us and continued to be so occupied after the lawsuit started.

Mr. COCHRAN.—We resist the offer on the ground that it is wholly incompetent and immaterial.

The COURT.—Objection to the offer is sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed. [416]

Testimony of S. Johnson Bakke, for Defendants.

S. JOHNSON BAKKE, a witness on behalf of defendants, being first duly sworn, testified as follows:

Direct Examination by Mr. GILMORE.

My name is S. Johnson Bakke. I am manager of the Moonlight Water Company and have been such manager for the last five years. I knew the Moonlight Water Company prior to that time.

Q. Where does the Moonlight Water Company keep its office or maintain its office in the Town of Nome?

Mr. COCHRAN.—Objected to as wholly irrelevant and immaterial.

Mr. GILMORE.—The purpose is to show that the Moonlight Water Company is a subsidiary company of the Pioneer Mining Company, and has maintained its office with the Pioneer Mining Company in the town of Nome for the past several years; that this witness as manager of the Moonlight Water Company knows these facts to be true and I expect to show by the witness as part of our estoppel, that we have plead, bringing home notice to the Pioneer Mining Company that *it stood idly by* during the period of litigation that we alleged took place without interceding on behalf of their title, and to show that they had absolute notice of it. I want to show that the two companies, the Moonlight Water Company and the Pioneer Mining Company office together in the town [417] of Nome and that the plaintiff, the Pioneer Mining Company, controlled

(Testimony of S. Johnson Bakke.)

the other company, the Moonlight Water Company, and its management.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

Q. Who employed you as manager of the Moonlight Water Company?

Mr. SCHOFIELD.—Objected to as immaterial.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

Q. Mr. Bakke, have you a written agreement between yourself and the Moonlight Water Company?

Mr. SCHOFIELD.—Objected to as immaterial.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

Q. Did you ever have any transactions between Mr. Lindeberg, president of the Pioneer Mining Company, and yourself with reference to the management of the Moonlight Springs Water Company?

Mr. SCHOFIELD.—Objected to as immaterial.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

Mr. GILMORE.—I now offer to prove by the witness in order to get it in the form of an offer, that ever since the year 1906, since the [418] Moonlight Water Company was organized, it had maintained its office with the Pioneer Mining Company and has been managed directly by Mr. Lindeberg,

(Testimony of S. Johnson Bakke.)

the president of the Pioneer Mining Company through this witness as the manager. I offer it for the purpose of showing that during the time of the litigation, which the plaintiff in its reply admits took place that the Pioneer Mining Company stood by during all those years and didn't assert title to the ground in controversy, that was then being litigated.

Mr. COCHRAN.—We resist the offer on the ground that it is incompetent and immaterial.

The COURT.—Objection to the offer sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed. [419]

Mr. GILMORE.—I now offer in evidence the deposition of Thomas D. Jensen, taken on the 30th of October, 1911.

The COURT.—Proceed.

Deposition of Thomas D. Jensen, for Defendants.

My name is Thomas D. Jensen. My age is thirty years. My business is mining. I have been mining since 1900 in the Nome District in the locality of Anvil Creek, Jess Creek and Rabbit Creek. I am familiar with claims in this vicinity. I have been outside three winters during that time. I know Andrew Jensen; he is my father; he is now residing at Buffalo, N. D. I know the Grant claim in the vicinity of Moonlight Springs. I am not very well acquainted with the Moonlight claim, or Moonlight Springs claim. I know of it. I also know of a claim called Bench No. 1 Moonlight in that vicinity.

Q. State whether or not you have had any correspondence with your father, Andrew Jensen, during

(Deposition of Thomas D. Jensen.)

the fall of 1910 and spring of 1911, with reference to the ground in controversy in this action.

A. I have. (Continuing:) I understand where the ground in controversy is between the two claims. I began the correspondence with my father with reference to the ground in controversy at the instance of Mr. McCumber. I recall that I wrote two letters to my father. I cannot give the exact date, but the first letter was written the very first days of November, 1910, and the last one a little before the middle of December, 1910.

Q. I hand you a paper marked at the top Exhibit "B," dated December 12, 1910. Will you just glance at that and state whether or not you know what that is? [420]

A. Yes, I know what that is.

Q. What is the instrument?

A. It is approximately a copy of the letter I wrote to my father. I could not say it was exactly, but in the main it is. (Continuing:) I have not the original. I know that my father received it. I received a reply to each of my letters. It was the latter part of January or first part of February when I received an answer to the first one, and the other one about the first of March.

Q. Where are those letters, do you know; have you them? A. No, I have not.

Q. Now, in the subpoena you were cited to bring them with you.

A. I did not have them; one I destroyed and the other I could not find. I thought I left it out on Jess

(Deposition of Thomas D. Jensen.)

Creek, but I could not find it.

Q. Why did you destroy one of them, Mr. Jensen?

A. Because I did not wish to introduce them as evidence in this case.

Q. Then, you have not got them with you at the present time? A. No, I have not.

Q. Did you destroy them, Mr. Jensen, under the advice of counsel or anyone, or did you do it of your own inclination?

A. Of my own inclination. (Continuing:) I destroyed them without the knowledge of anyone but myself. I thought it would be asked for and I did not want to have it. I think one of the letters was in my sister Katie's handwriting; the other one I am not sure about. The one I destroyed was in my sister's handwriting. [421]

Q. State whether or not the letter informed you that it was written at your father's dictation.

Mr. COCHRAN.—Objected to as irrelevant and immaterial and not the best evidence.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

Q. Now, Tom, I ask you to examine the exhibit I hand you here commencing, Council, March 28; examine it and state, if you know, what it is.

A. I believe it is the letter I wrote you last winter from Council. (Continuing:) That is my handwriting; that is the letter I sent you from Council City.

Q. State whether or not the quotation in that is a

(Deposition of Thomas D. Jensen.)

correct quotation from the letter you destroyed with reference to the matter in controversy in this action.

Mr. COCHRAN.—Objected to as wholly irrelevant and immaterial and hearsay and self-serving.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

Q. You copied from the other letter in writing this, the part that is in quotations?

Mr. COCHRAN.—Objected to as immaterial, irrelevant, hearsay and self-serving.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed. [422]

Mr. GILMORE.—We offer in evidence, if the Court please, the letter referred to in the deposition as Exhibit “C” and marked by the Notary.

Mr. COCHRAN.—Objected to as being irrelevant and immaterial for any purpose whatever, and self-serving.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

Mr. GILMORE.—I would like now to have Exhibit “C” to the deposition marked for identification.

The COURT.—It may be marked Defendants’ Exhibit 50 for identification; said exhibit being as follows:

Defendants' Exhibit No. 50.

Exhibit "C."

Council Mch 28, 11.

Mr. W. A. Gilmore

Nome, Alaska.

I recd a letter from home a couple of days ago. This was written before he had received the map and letter which I sent out together. I wrote to my father previous to that at Mr. McCumbers request. You can see in this sketch what relation his No. 6 bench on which is written the word "spring" and his "moonlight bench" bear to each other. No. 1 Below on Anvil Creek is also shown.

He says in explanation of the map as follows: "Enclosed find a raw draft of my bench claim on Anvil Creek. It starts from the lower half of No. 1 below on Anvil then butting against Lindbloms Moonlight claim and then following along Moonlight claim towards Anvil mountain ending not very far from the base of the Mountain. Grants claim starts right from where mine ends up the side of Anvil Mountain; there is a vale in Anvil Mountain and Grants claim runs up that vale. At the time I staked the bench on Anvil there was a spring on my claim. *My Bench on Moonlight* you will see in the drawing was staked the [423] full length towards Little Creek bounded on the end by the upper half of Lindbloms Moonlight claim. You can figure the directions out from the drawing. My Moonlight claim was not so very far from the base of Anvil Mountain possibly 100 feet."

(Deposition of Thomas D. Jensen.)

I expect to hear from my father again soon as there was in the last mail a receipt for that map and letter which was registered. I will then write you again.

Very truly,

THOS. D. JENSEN.

P S I send you this map not to be used as any evidence in the controversy but simply to throw any light it may to your own satisfaction.

T D J.”

Q. Now, just examine this exhibit beginning, Council, Alaska, April, 1911, and state, if you know, what that is.

A. Yes, it is a letter I sent you last spring from Council. (Witness continuing:) It is in my handwriting.

Q. State whether or not that correctly quotes the language in your father's letter with reference to the ground in controversy, the second letter received from him.

Mr. COCHRAN.—We object to that on the ground that it is wholly irrelevant and immaterial, and purely hearsay.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

Mr. GILMORE.—I offer to prove by the witness that it is in substance an exact copy of the letter received by him from his father with reference to the matter in controversy.

The COURT.—Objection sustained. To which

(Deposition of Thomas D. Jensen.)

ruling of the Court the defendants then and there excepted and the exception was allowed.

Q. Now, in the first letter that you received from your father it stated in substance, "Enclosed find a rough draft or drawing." State whether or not there was enclosed in that letter a drawing purporting to show the [424] claims in controversy.

A. There was.

Q. Please examine the instrument I hand you, marked Exhibit "A" at the top, and state if you know what that is.

A. That is the drawing I received from my father. (Continuing:) I received it in his letter, in that letter.

Q. State whether or not, Tom, that is your father's handwriting. A. I think it is.

Q. Are you familiar with his handwriting?

A. Yes, I believe it is.

Q. State whether or not that is the drawing enclosed in the letter received from him. A. It is.

Q. State whether or not it was received by you in one of the letters you have previously testified to.

A. It was.

Mr. GILMORE.—I now offer in evidence Exhibit "A" attached to the deposition, being the plat or map referred to.

Mr. LOMEN.—That is objected to as incompetent, irrelevant and immaterial, no proper foundation laid.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there

(Deposition of Thomas D. Jensen.)

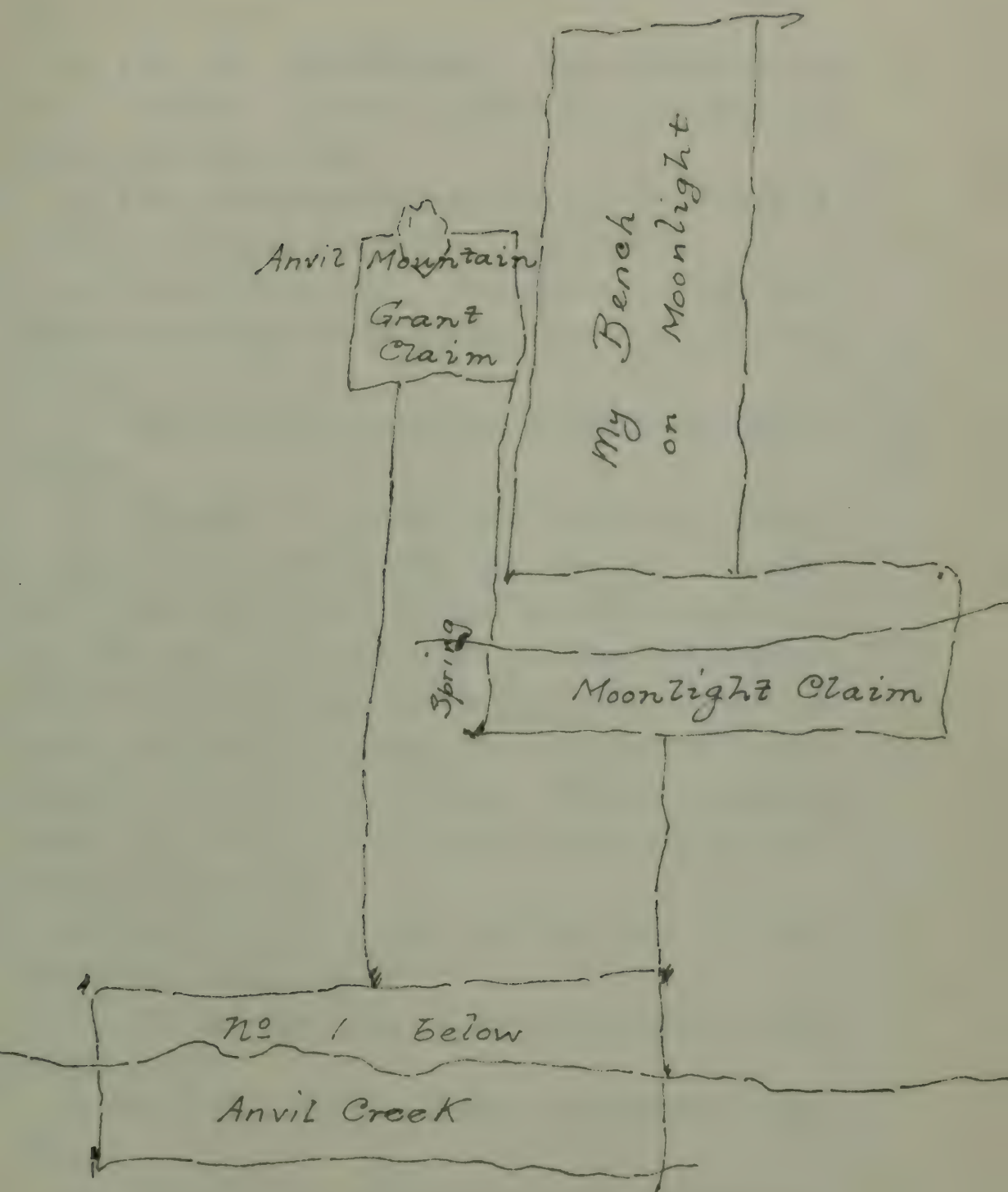
excepted and the exception was allowed.

Mr. GILMORE.—I would like to have the exhibit “A” to the deposition, being the plat referred to, marked for identification.

The COURT.—It may be marked Defendants’ Exhibit 51 for Identification; said exhibit being as follows: [425]

Exhibit "A"
Exhibit 'A'

658



Defendants' Exhibit '51' for Identification.

(Deposition of Thomas D. Jensen.)

Q. Is it your intention, Tom, to leave the District of Alaska soon?

A. Yes, sir. (Continuing:) This afternoon on the "Victoria." I will be absent for some time; at least until June, 1912.

Q. Tom, when was the first time you ever heard of a claim known as Bench No. 1 Moonlight?

A. In the fall of 1899. (Continuing:) The first time I ever heard of the Grant claim was in the fall of 1899.

Q. Who, if anyone, was with you on the ground in 1900?

A. My father. I am not sure whether my father pointed out the stakes that time or not. I do not know where the initial stake of the Bob Lyng claim is. The first time that I was on what is known as Bench No. 1 Moonlight was in the spring of 1900. I know where the Grant claim is on the ground to-day and I know where the Pioneer Mining Company claims the Bench No. 1 claim to be on the ground, also, approximately.

Q. Did you ever see any of the stakes of this Bench No. 1 Moonlight?

A. I think I saw some of the stakes but I do not recall whose.

Q. What time did you become interested in the claim?

Mr. COCHRAN.—Objected to as assuming something not in evidence.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there

(Deposition of Thomas D. Jensen.)

excepted and the exception was allowed.

Q. And from whom did you get that interest?

Mr. SCHOFIELD.—Objected to as assuming something not in evidence. [427]

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

Q. State whether or not the title stood in your name or your father's. A. In his name.

Q. Under what arrangements did you own it?

Mr. SCHOFIELD.—Objected to as assuming something, not the best evidence.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

Q. Did you have a deed of it from him or did it stand in his name?

Mr. SCHOFIELD.—Objected to as not the best evidence.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

Mr. GILMORE.—I now offer to prove by the answers to the different questions just offered and ruled out, in substance, that the witness stated he had a half interest in the claim; that he got it from his father under an arrangement with his father, the title to stand in his father's name but his father executed a power of attorney to him so he could convey it to whomever he pleased.

(Deposition of Thomas D. Jensen.)

Mr. SCHOFIELD.—Objected to as not the best evidence.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed. [428]

Q. To whom did you sell it? A. D. W. McKay.

Q. When?

A. In the spring of 1902, I gave him an option in 1901.

Q. And for what consideration, do you remember? A. Five hundred dollars.

Q. And what other interest?

A. A half interest in No. 6 Below Good Luck. I think that was all.

Q. Were you on the ground from the time you became interested in it up to the time you sold to McKay? A. I think I was there over the ground.

Q. At the time you were an owner from 1900 to 1902, until you sold to McKay, where did you claim the placer claim No. 1 Moonlight to lie?

Mr. SCHOFIELD.—Objected to as immaterial where he claimed it to lie.

Mr. COCHRAN.—Also assuming that he owned it.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

Q. Where did you claim it to lie when you were an owner?

Mr. COCHRAN.—Objected to as immaterial.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there

(Deposition of Thomas D. Jensen.)

excepted and the exception was allowed.

Q. What direction from Moonlight Springs did you claim your claim to be?

Mr. COCHRAN.—Objected to as immaterial.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there [429] excepted and the exception was allowed.

Q. What direction from Bob Lyng's claim?

Mr. COCHRAN.—Same objection, wholly irrelevant and immaterial.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

Mr. GILMORE.—I now offer to prove in substance by the answers of the witness to the various questions I have just asked, that while he was an equitable owner of the claim, from 1900 to 1902, the date when he sold to McKay, that he claimed the placer claim No. 1 Bench now claimed by the plaintiff in this lawsuit to be in an entirely different position and south of where the plaintiff now claims it, and that that claim was made in full knowledge of himself on the ground at the time.

Mr. SCHOFIELD.—The offer is objected to as immaterial.

The COURT.—The testimony of the witness has been to the contrary so far. The objection is sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

Q. Now, you never, at any time you were an owner

(Deposition of Thomas D. Jensen.)

of the claim claimed that it conflicted with the Grant claim?

Mr. COCHRAN.—Objected to as wholly irrelevant and immaterial.

The COURT.—Objection sustained. [430] To which ruling of the Court the defendants then and there excepted and the exception was allowed.

Q. State whether or not during all the time you were an owner of a half interest in the claim, from 1900 to 1902, that you ever claimed it to conflict with the Grant claim as marked on the ground.

Mr. SCHOFIELD.—Objected to as assuming that he owned an interest in the claim.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

Q. State whether or not, during all of the time that you were an owner of the claim, that you claimed that it conflicted, during 1901 and 1902, with the Grant claim as then marked on the ground, in 1901 and 1902.

Mr. SCHOFIELD.—Objected to as immaterial.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there objected and the objection was allowed.

Q. Did you ever claim that there was a conflict, in 1901 and 1902?

Mr. SCHOFIELD.—Same objection, immaterial.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

(Deposition of Thomas D. Jensen.)

Mr. GILMORE.—I now offer to prove by the witness in substance, by his answers to the questions, that during all of the times he was an equitable owner of a half interest in No. 1 Bench, claimed by the plaintiff, in [431] 1901 and 1902, that he never knew that it conflicted in any way with the Grant claim.

Mr. COCHRAN.—I object to the offer, the answer says, “I don’t know exactly where the claim was.”

Mr. GILMORE.—The answer says, “I never knew that it conflicted.” It couldn’t be any plainer than that.

Mr. SCHOFIELD.—Counsel should not make the offer contrary to evidence.

Mr. COCHRAN.—We object to the offer as being irrelevant, immaterial and not binding upon the plaintiff.

The COURT.—The objection is overruled, if counsel will endeavor to prove what he says.

Mr. GILMORE.—Very well, if I don’t it can be ruled out.

Q. State whether or not all of the time you were an owner of one-half interest in the claim in 1902, that you ever claimed that it conflicted with the Grant claim.

Mr. COCHRAN.—Just a moment, we move to strike it out.

The COURT.—Let him prove the offer.

Mr. GILMORE.—“A. No, sir, I never knew that it conflicted.”

Mr. SCHOFIELD.—I move to have it stricken

(Deposition of Thomas D. Jensen.)

out as not in conformity with the offer.

The COURT.—It may be stricken out, to which ruling of the Court defendants excepted and exception was allowed.

Mr. GILMORE.—“Q. As marked on the ground then, in 1901 and 1902?” “A. I don’t know exactly where the ground was marked. I don’t believe there ever was a conflict.” [432]

Mr. SCHOFIELD.—Move to strike out as not in conformity with the offer.

The COURT.—It may be stricken. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

Q. Did you claim there was a conflict in 1901 and 1902?

Mr. COCHRAN.—Objected to, your Honor having already ruled upon the offer and excluded it.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

Q. Directing your attention to the southerly side end stakes, being the side of the Lyng claim, next Little Creek. A. I know where those are.

Q. You know where that bunch of stakes are?

A. Yes.

Q. Did you ever examine those stakes to ascertain whether or not your father’s stakes were at that point?

A. I think I have examined them, but it was so long ago, so many years ago, I don’t remember whether there was any of his stakes there or not.

(Deposition of Thomas D. Jensen.)

(Continuing:) I don't remember the date I sold to McKay, I think the deed was given sometime the summer of 1902. I think the deed was recorded.

Cross-examination of Witness Offered by Mr. GILMORE for Defendants.

Q. Mr. Gilmore asked you whether or not you knew there was a conflict out there, during the years you were an owner.

A. I never knew there was a conflict.

Q. Then you never had any reason to claim there was a conflict?

A. I want to modify that a little. Sometime during the summer [433] of 1902 or thereabout I knew there was a conflict. (Witness continuing:) I never knew Mr. Kingsbury until this summer. I knew that Mr. Bard and Mr. Muther claimed the Grant claim at that time under a lease. Mr. Bard represented the owners, the Pacific Coal & Transportation Co. He never talked to me about the conflict.

Q. Now, while you were an owner in the claim, you never had occasion to question whether there was or was not a conflict between the Moonlight Bench and you Tom? A. I never did.

Redirect Examination by Mr. GILMORE.

I don't know who was working the ground in controversy in 1901 and 1902. I was out over the ground in 1901 in the vicinity of Moonlight Springs. I do not recall that I saw anyone working east of the Moonlight Springs on the ground now in conflict. I was over the ground before I sold it to McKay in the spring of 1902. I do not remember whether there

(Deposition of Thomas D. Jensen.)

was any evidence of work or not.

Q. State whether or not up to the time you sold to McKay in 1902, you had ever heard of any conflict between the Grant claim and Bench No. 1 off Moonlight. A. No, I never did.

Recross-examination Offered by Mr. GILMORE for Defendants.

I have seen my father's deposition. I read what my father said. I did not see the plat attached to the deposition. I read that portion of the deposition where he stated the way he had staked the Moonlight Bench. [434]

Q. Now, do you know whether or not the Grant claim was moved down onto that portion of the ground as your father states that he staked it?

A. No, I do not know.

Q. You know the Grant claim as they claim it now reserves a part of the ground that your father claims he staked? A. Yes.

Q. And you say you never knew, when you were an owner, that the claim located by your father was in conflict?

Mr. COCHRAN.—I object to that as assuming that he was an owner.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

Q. Did any of the Grant claim owners ever make any claim to you that they conflicted with the ground staked by your father, during the time that you owned an interest in the ground?

(Deposition of Thomas D. Jensen.)

A. No, they never did. I did not know Mr. Grant.

Redirect Examination by Mr. GILMORE.

Q. Did you ever hear of a conflict between the Grant claim as marked on the ground and Bench No. 1 Moonlight, until after the Pioneer Mining Company bought the claim?

Mr. COCHRAN.—Objected to as irrelevant and immaterial.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed. [435]

Q. They took an option in 1901 and got their deed in 1903, according to Mr. Lindeberg's evidence. You are sure you never heard of a conflict prior to 1901?

A. Yes, I am positive.

Recross-examination.

I was on the Bench No. 1 Moonlight with my father in 1900. I did not see a place on the claim when I was there where he had worked on the ground. I do not know where my father made a discovery of gold on the claim.

Q. And were you up on the portion of the ground that Mr. Gilmore claims now is covered by the Grant location? A. Yes, I undoubtedly was.

Q. With your father? A. Yes.

Q. And did you see any evidence of any work that you recall?

A. Not that I recall. (Continuing:) I don't recall any. I do not recall that my father had work on this ground.

Q. Did you ever do the representation work on the

(Deposition of Thomas D. Jensen.)

claim while you were an owner of it?

Mr. COCHRAN.—Objected to as immaterial.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

Q. Did you have or cause any work to be done on it?

Mr. COCHRAN.—Same objection, immaterial.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

Mr. GILMORE.—The next two or three questions in the deposition are on the same line. Under the ruling of the Court I will omit them. [436]

Q. After 1900 when you were on the claim with your father, when were you out again on the ground?

A. Well, I was on it several times in 1900, and the next time I was on it, was the spring of 1901. (Continuing:) I have had occasion to go over the ground and pay attention to it since. I was over it this past summer once. I went at the request of Mr. Lindenberg and once at the request of Mr. McCumber.

Q. And were you able to determine anything from those examinations with relation to the claims?

A. Yes.

Q. You were able to determine something?

A. Yes.

Q. And were you able to determine the lines of the Moonlight Bench? A. Not exactly.

Q. And were you able to determine the lines of the Grant claim, as originally staked?

(Deposition of Thomas D. Jensen.)

A. Not exactly.

Q. Do you recollect where the Moonlight Bench claim is marked now, as claimed to be marked by your father originally? A. I do.

Q. Do you know whether or not the lines are the same as when your father took you out there?

A. I don't believe they are. (Continuing:) To the best of my knowledge they are not. The first time I saw the Grant claim was when I was out there with my father in 1900. I would not say exactly, but it seems to me my father did point out a stake as the Grant stake; my impression is he did, but I may have got that impression from some other fact. I read my [437] father's deposition in relation to the Grant claim. I can't say positively that my father did point out a Grant stake. I can't recall positively that he did point out the Grant stake to me.

Redirect Examination.

(By Mr. GILMORE.)

Q. From the examination you made out there for Mr. Lindeberg and the second examination you made for Mr. McCumber the past summer, state whether or not you are able to state about where the Bench No. 1 lay at the time you and your father were there in 1900.

A. I can state approximately where I believe it was.

Q. State, then, as near as you can, where the claim lay at the time you and your father were out there in the year 1900.

(Deposition of Thomas D. Jensen.)

A. I believe the claim was a little further southeast than it is now.

Q. That is, so as to get it in the record, toward what object?

A. Toward Little Creek. (Continuing:) I am not sure what was the lengthwise direction of the claim.

Recross-examination.

(By Mr. COCHRAN.)

Q. You think that your father misstated the boundaries?

A. No, I don't think so. (Continuing:) I think if my father was on the ground he would probably see it different.

Q. Now, Tom, you have been very active in this case on behalf of the defendants? A. No, sir.

Q. You went out to the claim on their behalf?

A. I did. [438]

Q. And you wrote letters on their behalf?

A. Partly on their behalf and partly on your behalf.

Q. Now, you state in a letter marked Exhibit "B," "A couple of boys put several years' earnings into discovering the pay streak on the Grant claim"?

A. Yes, I wrote that.

Q. "Now, the Pioneer Company is jumping onto their necks and trying to take it away from them"; is that in the interest of the Pioneer Mining Company you wrote that? A. No, sir.

Q. Did you write that on behalf of the Pioneer Mining Company?

A. I did not write it in anyone's behalf.

(Deposition of Thomas D. Jensen.)

Q. "If these boys are entitled to the ground I would like to see them hold it," and you wrote that in behalf of the defendants? A. Yes, sir.

Q. Tried to persuade your father to—

A. I could not persuade my father; that would be out of the question.

Q. What did you mean by "help them out"?

A. If he knew of any facts he would be doing them a favor.

Q. You wrote this letter to your father to get facts to help out the defendants?

A. You have not read it all, Mr. Cochran.

Q. That is all, the period follows. Did you want to help out the defendants?

A. I know the rest of it too.

Q. You say you could not influence your father?

A. No, sir. [439]

Q. Why?

A. Because I know he could not be influenced; that is absolutely out of the question. (Continuing:) I know he would state the truth whatever he said.

Q. But now you doubt that he did tell the truth?

A. I do not.

Q. You think he did tell the truth in his deposition? A. I do.

Redirect Examination.

(By Mr. GILMORE.)

Q. When you say he told the truth, you think he told the truth as he recalled it? A. Certainly.

Q. You started to say that if he was on the ground,

(Deposition of Thomas D. Jensen.)

and Mr. Cochran shut you off, what addition did you wish to make?

A. I meant to say if he was on the ground the ground might look different out there, the actual ground, from what it looked on paper.

Q. And if I understood you correctly, you think he is mistaken when he puts the claim where the Pioneer claims it is?

Mr. COCHRAN.—Objected to as calling for an opinion of the witness.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

Q. Now, Mr. Cochran asked you whether or not with reference to a degree of certainty in your mind as to whether the claim is where your father testified it was, and you replied that you were certain in your own mind. [440]

A. I know with a degree of certainty in my own mind—I always had believed it to be No. 1 Moonlight, my father's claim, I always thought was further southeast from where it is now staked on the ground.

Q. And while you were an owner of the claim, state whether or not that is where you claimed it.

Mr. COCHRAN.—Objected to as immaterial, assuming something not in evidence.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

Q. With reference to writing these letters, had Mr. Cochran or Mr. Lomen, on behalf of the Pioneer

(Deposition of Thomas D. Jensen.)

Mining Company, asked you to write to your father?

A. They asked me if I knew anything of the Grant claim, or if I thought my father knew.

Q. State whether or not that was before you wrote the letters.

A. That was after I wrote the first letter, and the one that Mr. Cochran was reading.

Q. Now, was it your intention, or did you intend by writing these letters to your father, to influence him in the slightest degree?

A. I wished him to understand that there was considerable importance attached to the answer he would give to the questions and so that he would pay some attention to them for that reason.

Q. Now, speaking of "a couple of boys" who put in several years' work, to whom did you refer?

Mr. COCHRAN.—Objected to as incompetent, irrelevant and immaterial.

The COURT.—Objection sustained. To which ruling [441] of the Court the defendants then and there excepted and the exception was allowed.

Q. State whether or not you knew it to be a fact that they had done what you wrote.

Mr. COCHRAN.—Objected to as incompetent, irrelevant and immaterial.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

Q. And is it not a fact that you knew they had spent considerable money out there?

Mr. COCHRAN.—Objected to as incompetent, ir-

(Deposition of Thomas D. Jensen.)

relevant and immaterial.

Mr. GILMORE.—I wish to show that he did not write anything that was untrue. That he had no interest whatever in the correspondence.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

Recross-examination.

Mr. COCHRAN.—We waive it.

Mr. GILMORE.—I offer it in evidence then.

The COURT.—Proceed.

Q. You just took their word for it?

Mr. LOMEN.—Objected to as immaterial, incompetent and irrelevant.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed. [442]

Q. Did you go to see what prospecting they had done?

A. Yes, I went there over the ground and I saw that they had done considerable work.

Q. Did you do any panning? A. No, sir.

Q. Did you know they located a pay-streak?

A. I know they said they did. (Continuing:) I said in answer to Mr. Gilmore's question that if my father was on the ground it might look lots different.

Q. And it might not look any different?

A. It might not.

Q. That is just pure guessing on your part?

A. No, it is not guessing exactly; I am reasonably sure of it.

(Deposition of Thomas D. Jensen.)

Q. You are reasonably sure it might look different?

A. Yes. (Continuing:) I could not say where the original southerly stakes were. I might know Mr. Spanggard, but I am not sure. I have heard my father speak of him, but I am not sure I have met him. I did not know Mr. Kingsbury until this summer. I know Otto Scheuler very well. I know where Otto Scheuler located a claim out there. I don't know where the Depue Bench is. Neither do I know where the Carlson Bench or Nelson Bench is.

Q. Now, Tom as I understand it, you didn't have any occasion to pay any attention to that ground after 1902 until you went out there last summer.

A. No, not since I sold it to McKay.

Q. You have had no occasion to think about it?

A. I have always thought about it off and on.

Q. Not in the sense of having any interest in it?

A. No.

Q. In your mind it was a lost opportunity?

A. Yes. [443]

(Witness continuing:) I had occasion to pay attention to the claim and was over the ground until Mr. McKay took up the option. I walked over it up until 1902. I had occasion to pay attention to the claim afterwards, before this summer. I recall to mind that I used to be interested with the "Lost Treasure" claim that conflicted with the Grant.

Q. And did it have stakes, the Lost Treasure?

A. Yes.

Q. And were they in on the Grant claim?

(Deposition of Thomas D. Jensen.)

A. Yes.

Q. Did you understand that the Grant claim ran in on the Lost Treasure, or the Lost Treasure ran in on it?

A. Well, at the time I was interested in the Lost Treasure I claimed that the Grant claim ran in on it.

Q. And did the Lost Treasure have any stakes in on the Grant claim as it is staked now?

A. Yes, I think it did.

Q. And when did the Lost Treasure have stakes in there?

A. I can't recall at the present time.

Q. When was the Lost Treasure located, do you know?

A. I know the locator, Ike Powers. It was located in—I am not positive which year; I think it was after 1901; I am almost positive it was after 1900. The Grant claim was not a floater, as I understood it. I know there was a conflict with the Lost Treasure claim, and I did not understand that the Grant people had moved their stakes.

Redirect Examination.

(By Mr. GILMORE.)

Q. This Lost Treasure was located by Ike Powers in 1900, was it? [444]

A. I think it was later than that, but it might be as late as 1901.

Q. And the south portion of the Lost Treasure claim conflicted with the north portion of the Grant claim, did it? A. It did.

Q. State whether or not you were out there a num-

ber of times. A. I was.

Q. And where did the Grant claim lie with reference to the Lost Treasure?

A. It conflicted with the south boundary of the Lost Treasure.

Q. And lay in what direction? A. South.

Mr. GILMORE.—I now offer in evidence, if the Court please, Exhibit “B” attached to the deposition of Thomas D. Jensen, being the letter referred to by the witness, dated December 12, 1910, to his father, Andrew Jensen.

The COURT.—It may be received in evidence and marked Defendants’ Exhibit 52; said exhibit being as follows:

Defendants’ Exhibit 52.

(Exhibit “B” to Deposition.)

Nome, Alaska, December 12, 1910.

My dear father:—

I wrote you sonetime since in regard to some litigation there was coming up in regard to your Bench No. 1 on Moonlight. The Pioneer Mining Company now holds your title to that ground. You remember the ground Grant located, you were a witness on his location notice. According to his location notice his claim joins to some extent Bob Lyng’s Moonlight claim. You know whether it did or not? Did Grant’s claim take in some of the willows or flat ground or was it entirely on the rock pile? [445]

I am sending you a map which shows your No. 6 Bench the Lyng Moonlight Claim and your No. 1 Moonlight Bench which the Pioneer people now

claim take the best portion of the Grant claim; that part which I have lined in red ink. Now if I remember correctly your Moonlight Claim was farther away from your No. 6 Bench and came quite a ways from touching it. Your No. 6 Bench on this map is well established and recognized. Now I wish you would trace on the inclosed map what you believe is the correct boundaries of the No. 1 Moonlight Bench Claim.

A couple of boys have put several years earnings in to discover the pay streak on the Grant Claim, now the Pioneer Company is jumping onto their necks and trying to take it away from them. If these boys are entitled to this ground as the Grant Claim I would like to see them hold it and you would be doing several people a considerable favor if you could help them out. If they are not entitled to it the sooner that they find it out the better for them.

I wish you would answer this by return mail and also send back the map. You do not need to fear that this will involve you in any way. Please write immediately so that your reply will come in by the winter mail.

Very truly your son,

TOM."

Mr. GILMORE.—I also offer in evidence Exhibit "D," identified by the witness, and attached to the deposition, being the letter from the witness, Tom D. Jensen, to myself, dated April 11, 1911, from Council City.

Mr. LOMEN.—Objected to as incompetent, irrelevant and immaterial.

The COURT.—Objection sustained. To which ruling of the Court the defendant then and there accepted, and the exception was allowed.

Mr. GILMORE.—I should like to have it marked for identification.

The COURT.—It may be marked Defendants' Exhibit 53 for Identification; said exhibit being as follows:

Defendants' Exhibit 53.

(Exhibit "D" to Deposition.)

Council Alaska April 11, 11

Mr. W. A. Gilmore

Nome

Dear Gilmore— [446]

My Fathers letter arrived a few days ago, he writes as follows. "Received your letter together with map of claims. It is impossible for me to do any marking on the map because I think the claims do not seem to be in the same positions. My bench on Anvil so far as I remember was staked along the lower half of No 1 below Discovery on Anvil Creek running 1320 feet towards Anvil Mountain but not the whole width because after running some distance towards moonlight creek I struck Robert Lyngs claim on Moonlight. Then I followed the Moonlight then again along the upper end of Moonlight claim until I had the 1320 feet from the location stake on No 1 below. I dont remember how many feet the upper end of my claim was, tho I think it was several hundred.

Now Grants location stake was set right beside

mine at the upper end of Moonlight claim, running up Anvil Mountain. There was some flat ground between the mountain and our stakes so Grants claim takes in some of the flat ground between the end of my claim and the base of Anvil Mountain.

My Bench on Moonlight was some distance from the upper end of my Anvil Bench How far I do not remember. My Bench on Moonlight started from the upper end of Robert Lyngs claim, taking in the willows on a kind of high bench but not clean up to the base of the mountain. There was some space between the base of the mountain and my claim. If I remember correctly the last year I was there I think Robert Lyngs stakes had been moved some up towards Anvil Mountain from where they were originally located. I think this was done in order to take in all the springs. This is about all the information I can give you.”

My father returned the map but he did not do any writing on it as it did not seem very clear to him. If I can help to explain the map to you that I sent I will do so when I come over which will be in about 5 weeks.

Very truly

THOS D. JENSEN.

P. S. Congratulations on being Mayor.

TOM. [447]

Testimony of Fred Cowden, Recalled by Defendants.

Direct Examination by Mr. GILMORE.

I am deputy recorder of the Cape Nome recording precinct.

Q. I hand you here a volume, will you state what it is?

A. Vol. 108 of the records of deeds of the Cape Nome Recording District. (Continuing:) It is one of the original books of record of public instruments or documents. On page 230 of Vol. 108 is recorded the deed from T. O'Reilley to W. D. Shue and Sufus Sorenson, of an undivided one-half interest in the Jerome Fraction on the east fork of Moonlight Creek.

Mr. GILMORE.—I offer the instrument in evidence, if the Court please, being instrument No. 7306, as of record on pages 230, 231, 232 and top of 233, Vol. 108, original records.

Mr. COCHRAN.—Is that the Jerome Fraction?

Mr. BRUNER.—Yes.

Mr. LOMEN.—Objected to as incompetent and immaterial.

Mr. GILMORE.—We offer this to show the Court that the ground now claimed by plaintiff as Bench No. 1, and to which they testified they hold possession and did work on, was not held as Bench No. 1, but held under an adverse title. As the record shows it is a chain of title between the locator of the Jerome Fraction and the plaintiff, Pioneer Mining Company.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there

(Testimony of Fred Cowden.)

excepted and the exception was allowed. [448]

Mr. GILMORE.—I ask leave of Court to file a certified copy of this exhibit, and have it marked for identification.

The COURT.—You may file such a copy and the same may be marked Defendants' Exhibit 54 for Identification.

Q. Now, Mr. Cowden, examine this volume and tell me if you know what it is.

A. Vol. 124, records of deeds Cape Nome Recording District of Alaska. (Continuing:) It is the original record book of deeds. On page 381 is recorded deed from W. D. Shue to Sufus Sorenson, for an undivided one-fourth interest in the Jerome Fraction on the East Fork of Moonlight.

Mr. GILMORE.—I now offer that in evidence, if the Court please, being instrument identified by the witness as instrument No. 22,570, recorded in Vol. 124, pages 381-382 of the records of the Cape Nome Mining District.

Mr. LOMEN.—For the same purpose?

Mr. GILMORE.—For the same purpose as stated in the previous offer.

Mr. LOMEN.—Objected to for the same reason and on the same ground.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

Mr. GILMORE.—I ask leave to have certified copy of this marked for identification.

The COURT.—You may, and the same may be

(Testimony of Fred Cowden.)

marked Defendants' Exhibit 55 for Identification.
[449]

Q. Referring now to the same volume, 124, which you have just identified, turn to page 283 and tell me what instrument is recorded on that page.

A. Deed from George Crawford to Sufus Sorenson of an undivided one-half interest in the Jerome Fraction on the East Fork of Moonlight.

Mr. GILMORE.—I offer the record of that instrument, being Instrument No. 22,571, deed from George Crawford to Sufus Sorenson, of an undivided one-half interest in the Jerome Fraction.

Mr. COCHRAN.—We object to the offer for the reasons stated in the two preceding offers.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

Mr. GILMORE.—I ask leave to file certified copy of that instrument for identification.

The COURT.—You may do so and the same may be marked Defendants' Exhibit 56 for Identification.

Q. Now, refer to Volume 127; what is that?

A. Vol. 127 of Deeds of the Cape Nome Recording Precinct. The original book of entries of the records.

Q. Turn to page 47 and tell me what instrument is recorded there.

A. Instrument No. 23,520, being deed from Sufus Sorenson to Caribou Mining Company for that certain placer mining claim known as Jerome Fraction.

Mr. GILMORE.—I offer that instrument in evi-

(Testimony of Fred Cowden.)

dence, if the Court please, for the same purpose as the preceding offers, connecting the title of the Jerome Fraction with the Pioneer [450] Mining Company.

Mr. LOMEN.—Same objections as before.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

Mr. GILMORE.—I ask leave to have certified copy of the instrument marked for identification.

The COURT.—You may do so and the same may be marked Defendants' Exhibit 57 for Identification.

Q. I hand you another volume, Mr. Cowden, will you tell me what it is?

A. Vol. 136 of the records of deeds of the Cape Nome Recording District. (Continuing:) It is one of the original record books of deeds. On page 164 is recorded instrument No. 26,156, being a deed from the Caribou Mining Company to the Pioneer Mining Company for that certain placer mining claim known as the Jerome Fraction, on East Fork Moonlight Creek.

Mr. GILMORE.—I now offer that instrument in evidence, being instrument No. 26,156, and being a deed from the Caribou Mining Company to the Pioneer Mining Company for the whole of the Jerome Fraction, being the southerly portion of the ground now claimed by the plaintiff, the deed bearing date June 21, 1904.

Mr. LOMEN.—Same objection.

The COURT.—Objection sustained. To which

(Testimony of Fred Cowden.)

ruling of the Court the defendants then and there excepted, and the exception was allowed. [451]

Mr. GILMORE.—I ask leave to have certified copy of this instrument marked for identification.

The COURT.—You may do so and the same may be marked Defendants' Exhibit 58 for Identification.

Q. Now, Mr. Cowden, please examine this volume and tell me, if you know, what it is?

A. Vol. 141 of proofs of labor of the Cape Nome Recording District, District of Alaska. (Continuing:) It is the original book of records. On page 443 is recorded instrument No. 29,095, being proof of labor of the year 1904, of the Jerome Fraction, situated on the East Fork of Moonlight Creek, commencing on page 443 and extending to and including page 446.

Q. Signed and sworn to by whom?

A. By L. Stevenson.

Mr. GILMORE.—I now offer the instrument in evidence, if the Court please, being proof of labor bearing date December 31, 1904, for the assessment work on the Jerome Fraction. The offer is made for the purpose of showing that the alleged possession held by the plaintiff of a part of the ground south of the ground in controversy was held under the title now plead and relied on by them under another different claim, to wit, the Jerome Fraction; and also for the purpose of showing that by reason of their ownership of the Jerome Fraction they ratified and identified the lines of the Grant claim and the Lyng claim. [452]

(Testimony of Fred Cowden.)

Mr. LOMEN.—Objected to as incompetent, irrelevant and immaterial.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

Mr. GILMORE.—I ask leave to substitute in the record a copy for identification.

The COURT.—You may do so and the same may be marked Defendants' Exhibit 59 for Identification.

Q. Mr. Cowden, please examine this volume, 158, and tell me what it is.

A. Vol. 158 of the records of proof of labor. (Continuing:) It is one of the original books. On page 152 and the following pages is recorded instrument No. 23,513, being proof of labor for the year 1905 on the Jerome Fraction, East Fork, Moonlight.

Q. Signed and sworn to by whom?

A. By L. Stevenson, May 31, 1905, before Roy G. Hudson, Notary Public.

Mr. GILMORE.—I offer the instrument in evidence for the same purpose as stated in the last preceding offer.

Mr. LOMEN.—Same objection with the additional objection that this proof of labor being prior to March 2, 1907, before the Waskey Act.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed. [453]

Mr. GILMORE.—I ask leave to file a certified copy in lieu of the original.

The COURT.—You may do so, and the same may

be marked Defendants' Exhibit 60 for Identification.

Mr. GILMORE.—I now offer in evidence the original complaint of Cause 921 in this court, entitled Jafet Lindeberg et al., plaintiffs, vs. George Dover-spoke et al., defendants, being complaint in a suit brought in this court with reference to a controversy between the Moonlight Water Co. and the laymen of the Pacific Coal & Transportation Company, in the year 1903. This is offered for the purpose of showing that Jafet Lindeberg, Eric Lindblom and John Brynteson, who are admitted in the evidence to be the principal stockholders of the Moonlight Company, organizers and copartners doing business under the firm name and style of Moonlight Springs Water Co., prior to the organization of the Moonlight Water Company now operating. It is offered in support of our 7th affirmative defense.

Mr. LOMEN.—We object to that for the reason that the complaint shows on its face that it is not between the same parties or any of them that are parties to the present action; and for the further reason that the cause of action set up in the complaint now offered in evidence, is upon wholly different grounds.
[454]

Mr. COCHRAN.—We interpose the further objection that the facts plead in the 7th affirmative defense do not constitute an estoppel.

The COURT.—What was the date of that suit?

Mr. COCHRAN.—Just about the time of the break-up in 1903.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there

excepted and the exception was allowed.

Mr. GILMORE.—I ask leave to have the exhibit marked for identification.

The COURT.—You may do so and the same may be marked Defendants' Exhibit 61 for Identification, said exhibit being as follows:

Defendants' Exhibit 61.

*In the United States District Court for the District
of Alaska, Second Division.*

JAFET LINDEBERG, ERICK O. LINDBLOM and
JOHN BRYNTESON, Copartners Doing
Business Under the Firm Name and Style of
"The MOONLIGHT SPRINGS WATER
COMPANY,"

Plaintiffs,

vs.

GEORGE DOVERSPIKE, GEORGE CRAW-
FORD, FRED WILLIAMS, JOHN DOE,
RICHARD ROE and PETER COE,

Defendants.

Complaint.

Come now the plaintiffs in the above-entitled action, and for cause of action against the above-named defendants allege: [455]

1.

That the true names of the defendants John Doe, Richard Roe, and Peter Coe are unknown to the plaintiffs, and they are therefore designated by the fictitious names of John Doe, Richard Roe, and Peter

Coe, and pray that when their true names are ascertained this complaint and all proceedings herein may be amended accordingly.

2.

That plaintiffs are and were at all times herein mentioned copartners engaged and doing business under the firm name and style of "THE MOONLIGHT SPRINGS WATER COMPANY."

3.

That the City of Nome is and was at all times since the month of April, 1901, a city or town duly incorporated as municipal corporation under the act of Congress entitled "An Act making further provisions for a civil government for Alaska, and for other purposes," approved June 6th, 1900; that said city of Nome was prior to said April, 1901, and since June, 1899, has been a permanent town and settlement of a population of upwards of two thousand inhabitants. That said town or city of Nome ever since the year 1899 has been and now is a town or city of upwards of two thousand permanent inhabitants.

4.

That the grantors and predecessors in interest of these plaintiffs in the year 1899 and 1900 located and appropriated and diverted for domestic and culinary and other uses the waters of certain springs of pure water known as Moonlight Springs situated about four miles northwest from the said Town or City of Nome; that during the year 1900 the grantors and predecessors in interest of plaintiffs at the expense of upwards [456] of \$20,000 built and constructed

from said springs to the City of Nome a pipe-line more than ten inches in diameter and more than four miles long for conducting said water to said town or city of Nome, and plaintiffs and their grantors and predecessors in interest have since the year 1900 furnished to said town or city of Nome and its inhabitants through said pipe-line and from said springs pure spring water for domestic, culinary and other purposes useful. That said water so furnished by plaintiffs is and was at all said times the only water supply of said city of Nome and its inhabitants. That said Moonlight Springs are situated at the foot of Anvil Mountain, and the locality of said springs are and have been since the year 1900 well known to the defendants and all other persons from the construction thereto of plaintiffs' pipe-line; that plaintiffs, their grantors and predecessors in interest, are the original and prior and only appropriators of the waters of said springs, and ever since the year 1900 have diverted and appropriated the waters thereof to the uses and purposes aforesaid.

5.

That said Moonlight springs are formed by water issuing from the earth at the southern base of Anvil Mountain and flow from well-defined subterranean channels and sources forming a creek or watercourse known as Moonlight Creek. That the plaintiffs and their grantors and predecessors in interest have since the year 1900 diverted and appropriated the waters of said Moonlight Springs by building an artificial dam at the head of said Moonlight creek immediately below where the waters of said springs naturally

collect and from the channel of said Moonlight Creek, and by there diverting said water into said pipe-line and conveying the same to said town or city of Nome. That said [457] water so diverted and appropriated by plaintiffs and their grantors and predecessors in interest is now being actually conveyed from said Moonlight Springs and Moonlight Creek through said pipe-line of plaintiffs to said Town or City of Nome and there used by the said town or City of Nome and its inhabitants for domestic and culinary purposes. That by the sale of said water so appropriated and diverted by plaintiffs to the said town or city and its inhabitants the said plaintiffs derive a revenue and profit of over four thousand dollars yearly.

6.

That the amount of water so appropriated and diverted by the plaintiffs and their grantors and predecessors in interest from said Moonlight Springs and Moonlight Creek exceeds 400 cubic feet per minute and the diversion and appropriation thereof by plaintiffs in manner and for the uses aforesaid has been since the year 1900 uninterrupted and continuous so far as the climate conditions will permit.

7.

That the plaintiffs are now the owners of said pipe-line and said springs and the waters thereof, and they and their grantors and predecessors in interest are the original and prior and only locators and appropriators thereof; that the ownership of said plaintiffs in and to said waters extends to all the waters of said Moonlight Springs and Moonlight Creek to

the full capacity of their said pipe-line, and the appropriation and diversion of the *of the* same was originally made and ever since has been made with the knowledge and permission of [458] the owners of the ground upon which said springs are situated; that at all times during the year 1900 the lands and premises upon which said springs are situated were owned and possessed by one Robert Lyng as an unpatented placer mining claim, and the said Robert Lyng did then and there consent to the diversion and appropriation by plaintiffs and their grantors and predecessors in interest of the waters of the said Moonlight Springs and Moonlight Creek in the manner and form and to the extent and for the uses and purposes hereinbefore alleged, and did by his certain deed and conveyance in writing convey to plaintiffs' grantors and predecessors in interest all the waters of said Moonlight Springs and Moonlight Creek and the right to divert and appropriate the same and to build on his said placer claim all necessary dams and to maintain thereon said pipe-line and all other necessary works or structures to divert and appropriate said waters for the uses and purposes aforesaid. That said dam of plaintiffs is actually constructed on said placer mining claim, and the said waters of said Moonlight Springs and Moonlight Creek are and were at all times actually diverted and appropriated by plaintiffs and their grantors and predecessors in interest wholly within the boundaries of said placer mining claim.

8.

That the defendants and their agents, servants and

employees have been for several days last past and nor are actually engaged in mining and sluicing large quantities of dirt and gravel near to said Moonlight Springs and upon ground adjacent and higher in elevation, and have during said time and are now discharging and causing to flow upon and into said [459] Moonlight Springs and Moonlight Creek above plaintiffs' said dam large quantities of mud, dirt, tailings, and impure and muddy water and debris, and have thereby rendered the waters of said springs and said creek muddy, impure and entirely unfit for domestic or culinary purposes. That said wrongful acts of defendants have continued up to the present date, and the defendants refuse to desist therefrom and have threatened to and will unless restrained and enjoined therefrom continue the commission of said wrongful acts aforesaid. That the waters of said Moonlight Springs and Moonlight Creek at the point where the same are diverted by plaintiffs as hereinbefore alleged are by the aforesaid wrongful acts of defendants rendered so muddy and impure as to be entirely unfit for domestic use and the use of the same for domestic purposes is and will be dangerous to the health of all persons using or drinking the same.

9.

That the water from said Moonlight Spring and said Moonlight Creek is in its natural state pure and clear and peculiarly adapted for domestic and culinary purposes, and its use therefore is an absolute necessity for said city of Nome and its inhabitants. That said city and its inhabitants have no other sup-

ply whatever of water fit for domestic or culinary purposes, and the stoppage or pollution of the said supply of water from said Moonlight Springs and Moonlight Creek is dangerous to the health of the inhabitants of said town or city and causes irreparable injury, damage and inconvenience to said city and its inhabitants. [460]

10.

That the said wrongful acts of the defendants will if continued force the plaintiffs to discontinue the diversion and appropriation of said water through said pipe-line to said town or city of Nome and to discontinue supplying said water to said town or city and its inhabitants and plaintiff will thereby be damaged in excess of the sum of \$10,000. That plaintiffs have by the said wrongful acts of said defendants already been damaged in excess of the sum of one thousand dollars.

11.

That the wrongful acts of said defendants hereinbefore alleged are and will continue to be a public nuisance and a private nuisance.

12.

That plaintiffs have for the prevention of said continued wrongful acts of defendants no adequate or any remedy at law and are in the premises entirely remediless except by an injunction to issue out of this honorable court.

WHEREFORE, plaintiffs pray that an injunction issue herein restraining and enjoining the defendants and their agents, servants and employees from discharging or causing to flow upon or into Moonlight

Springs or Moonlight Creek above the impounding dam of plaintiffs any mud, dirt, tailings, impure or muddy water or debris, and enjoining and restraining the defendants, their agents, servants and employees from in any manner muddying or polluting the waters of said Moonlight Springs or Moonlight Creek above the said dam of plaintiffs, [461] and that upon the final hearing said injunction be made permanent. Plaintiffs also pray for all other relief to which they may be in equity entitled, including costs.

IRA D. ORTON,
Attorney for Plaintiffs.

United States of America,
District of Alaska,—ss.

Ira D. Orton, being first duly sworn, deposes and says:—

That he is the attorney in fact for the above-named plaintiffs; that he makes this verification on behalf of plaintiffs for the reason that plaintiffs are not within the District of Alaska; that he has read the foregoing complaint, knows the contents thereof, and the same is true as he verily believes.

[Seal]

IRA D. ORTON.

Subscribed and sworn to before me this 18th day of May, 1903.

JAS. W. BELL,
Notary Public in and for the District of Alaska, at
Nome.

Mr. GILMORE.—I offer the answer of the defendants in the same cause, being action No. 921, wherein

the defendants in said action assert their title, to wit, a written lease on the premises now in controversy, by virtue of the title of the defendant, Pacific Coal & Transportation Company.

Mr. COCHRAN.—Same objection. Wholly incompetent, irrelevant and immaterial.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

Mr. GILMORE.—I ask leave to have it marked for identification.

The COURT.—It may be marked for identification, Defendants' Exhibit No. 62, said exhibit being as follows: [462]

[Defendants' Exhibit No. 62.]

*In the United States District Court for the District
of Alaska, Second Division.*

JAFET LINDEBERG, ERICK O. LINDBLOM
and JOHN BRYNTESON, Copartners Do-
ing Business Under the Firm Name and Style
of the MOONLIGHT SPRINGS WATER
COMPANY,

Plaintiffs,

vs.

GEORGE DOVERSPIKE, GEORGE CRAW-
FORD, FRED WILLIAMS, JOHN DOE,
RICHARD ROE and PETER COE,

Defendants.

Answer.

Come now the defendants Frank Doverspike, whose name appears in plaintiffs' complaint as

George Doverspike, C. T. Howard sued under a fictitious name, George Crawford and Fred Williams, defendants in the above-entitled action, and for answer and defense to plaintiffs' complaint admit, deny and allege as follows:

I.

Admit paragraphs 1, 2 and 3 of plaintiffs' complaint.

II.

Answering paragraph 4 the defendants deny that the grantors or predecessors in interest of the plaintiffs in the years 1899 and 1900 located or appropriated or diverted for domestic or culinary or other uses the waters of certain springs of pure water known as Moonlight Springs, situated about four miles northwest of the town or city of Nome, except as hereinafter alleged in defendants' affirmative answer. And [463] deny that during the year 1900 the grantors or predecessors in interest of the plaintiffs at an expense of upwards of \$20,000 built or constructed from said springs to the city of Nome a pipe-line more than ten inches in diameter and more than four miles long for conducting said water to said town or city of Nome, and deny that plaintiff or their grantors or predecessors in interest have since the year 1900 furnished to said town or city of Nome or its inhabitants through said pipe-line or otherwise or from said springs pure spring water for domestic or culinary or other purposes useful, save and except as set forth in defendants' further and separate answer. Deny that said water so furnished by plaintiffs is or was at all the said times the only

water supply of said city of Nome or its inhabitants. Admit that said Moonlight Springs are situated at the foot of Anvil Mountain, but deny that the locality of said springs are or have been since the year 1900 well known to the defendants or all other persons from the construction thereto of plaintiffs' pipe-line, and defendants deny that plaintiffs' said pipe-line is built or constructed to said springs or any of them; that as to whether or not the plaintiffs or their grantors or predecessors in interest are the original or prior or only appropriators of the waters of said springs or ever since the year 1900 have diverted or appropriated the waters thereof to the uses or purposes aforesaid, defendants have not sufficient knowledge or information to form a belief, and therefore deny the same.

III.

Answering paragraph 5 of plaintiffs' complaint defendants allege: That as to whether or not said Moonlight Springs [464] are formed by water issuing from the earth at the southern base of Anvil Mountain and flow from well-defined subterranean channels or sources forming a creek or watercourse known as Moonlight Creek, defendants have not sufficient knowledge or information to form a belief, and therefore deny the same. Deny that the plaintiffs or their grantors or predecessors in interest have since the year 1900 diverted or appropriated the waters of said Moonlight Creek or Moonlight Springs by building an artificial dam at the head of said Moonlight Creek immediately below where the waters of said springs naturally collect or from the

the channel of said Moonlight Creek, or by there diverting said water into said pipe-line or conveying the same to said town or city of Nome, except as alleged in defendants' further and separate answer and defense. Deny that said water so diverted or appropriated by the plaintiffs or their grantors or predecessors in interest is now being actually conveyed from said Moonlight Springs or Moonlight Creek through said pipe-line of the plaintiffs to said town or city of Nome, or there used by the said Town or City of Nome or its inhabitants for domestic or culinary purposes, except as alleged in defendants' further and separate defense. That as to whether or not by the sale of said or any water so appropriated or diverted by plaintiffs to the said town or city or its inhabitants the said plaintiffs derive a revenue or profit of over four thousand dollars yearly defendants have not sufficient knowledge or information to form a belief and therefore deny the same.

IV.

That as to the matters alleged in paragraphs 6 and 7 of plaintiffs' complaint defendants have not sufficient knowledge or information to form a belief, and therefore deny the same. [465]

V.

Answering paragraph 8 of plaintiffs' complaint defendants admit that the defendants and their agents, servants and employees were for several days prior to the filing of plaintiffs' complaint sluicing large quantities of dirt and gravel near to said Moonlight Springs and upon ground adjacent and higher in elevation, but deny that during said time

defendants were or are now or at any time were discharging or causing to flow upon or into said Moonlight Springs or Moonlight Creek above plaintiffs' said dam large quantities of mud or dirt or tailings, or impure or muddy water or debris, or have thereby rendered the waters of said creek muddy or impure or entirely unfit for domestic or culinary purposes. Deny that said alleged wrongful or other acts of the defendants have continued up to the present time, or that the defendants refuse to desist therefrom or *or* have threatened to or will unless restrained or enjoined therefrom continue the commission of said alleged wrongful acts aforesaid, save and except as set forth in defendants' further and separate defense. Deny that the waters of Moonlight Springs or Moonlight Creek at the point where the same are diverted by the plaintiffs as hereinbefore alleged are by the aforesaid alleged wrongful acts of defendants rendered so muddy or impure as to be entirely unfit for domestic use or the use of the same for domestic purposes, is or will be dangerous to the health of all or any persons using or drinking the same, and defendants deny that any of their acts in mining, washing and sluicing upon the ground near and adjacent to Moonlight Creek, and Moonlight Springs, has been or is wrongful. [466]

VI.

Answering paragraph 9 of plaintiffs' complaint defendants admit that the water from Moonlight Springs and Moonlight Creek is in its natural state pure and clear, and peculiarly adapted for domestic and culinary purposes, but deny that its use therefor

is an absolute necessity for said city of Nome or its inhabitants. Deny that the city of Nome and its inhabitants have no other supply whatever of water fit for domestic or sulinary purposes, or that the stoppage or pollution of the said supply of water from said Moonlight Springs or Moonlight Creek is dangerous to the health of the inhabitants of said town or city of Nome or causes irreparable injury or damage or inconvenience to said city or its inhabitants.

VII.

Defendants deny paragraph 10 of plaintiffs' complaint and each and every portion, part and allegation thereof.

VIII.

Defendants deny paragraphs 11 and 12 of plaintiffs' complaint and each and every part and portion thereof.

And for a further and separate affirmative defense to plaintiffs' complaint defendants allege:

I.

That the Grant Placer Mining Claim, upon which the defendants were mining and sluicing at the date of the filing of the Complaint in this action, was located as a placer mining claim on the 9th day of January, 1899, by one ——— Grant, and the same has been ever since said date a valid and subsisting [467] location of the ground contained within the exterior boundaries thereof. That the boundaries of said claim were at said date markes upon the surface of the ground by permanent stakes and monuments, and have ever since said time been so marked, so that they could and can be readily traced.

II.

That the defendants' lessors and their grantors and predecessors in interest are now, and have been ever since said 9th day of January, 1899, the owners of said Grant placer mining claim.

III.

That the said Grant Placer Mining Claim adjoins the Moonlight Placer Mining Claim, upon which the said Moonlight Springs are situated, and is upon ground higher in elevation than the said Moonlight Claim or the said Springs.

IV.

That location of the Grant Placer Mining Claim, under which the defendants claim the right to work, mine and operate the same was located long prior to any appropriation of the waters of Moonlight Springs or Moonlight Creek for the purposes set forth in plaintiffs' complaint, either by the plaintiffs or their grantors and predecessors in interest.

V.

That the plaintiffs during the year 1900 constructed their said pipe-line from the town or city of Nome to a point about 300 feet below the said Moonlight Springs, and at said latter point constructed a mud dam about 300 feet long in a low, [468] flat, marshy place; and that said dam so constructed, operated and maintained by plaintiffs received the waters from Moonlight Springs, Moonlight Creek, and also all the surface water from the Grant Placer Mining Claim above described and all of the surface and seepage water from a large scope of ground around the southerly slope of Anvil Mountain, and

all of said surface water flows down the natural watershed of Anvil Mountain into plaintiffs' said dam, and commingles with and pollutes and contaminates the waters of Moonlight Springs and Moonlight Creek.

VI.

That the plaintiffs can, by extending their said pipe-line for a distance of about 200 feet, secure an ample supply of good, pure spring water, uncontaminated by any surface water, sufficient to fill their said pipe-line and to supply the inhabitants and city of Nome, and for all other purposes for which the plaintiffs have appropriated said water. And that the plaintiffs can by digging wing ditches on each side of their receiving reservoir, as it is now constructed, operated and maintained, prevent the waters from the Grant placer mining claim and the other surface water from the watershed of Anvil Mountain from flowing into their said dam and contaminating and polluting the waters of Moonlight Springs, and that said pipe-line can be so extended or said wing ditches so constructed as aforesaid at an expense not exceeding \$300.00.

VII.

That the mining claim upon which the defendants were working and sluicing at the date of the filing of plaintiffs' [469] complaint, is so situated on ground higher in elevation than the said dam of plaintiffs, that it is impossible for them to work and mine said ground or to wash out the gold contained in the dump thereon, without permitting the muddy water, after using the same to flow down its natural

sources into the dam of the plaintiffs, thereby mingling with the waters in said dam and discoloring the same. That the plaintiffs can as set forth in paragraph 6 of defendants' further and separate defense prevent the said water, discolored by defendants' use of the same, from flowing into the dam of the plaintiffs or interfering with their water right or their appropriation of the waters of Moonlight Springs or Moonlight Creek. That said water used by the defendants was and is surface water, caused from the melting of snow on the slope of Anvil Mountain, and that the same is not fit for domestic or culinary purposes whether used by the defendants for mining purposes or not.

VIII.

That the defendants were, at the time they were restrained and enjoined by virtue of the preliminary restraining order in this action, working and sluicing out their dump of pay-dirt and gravel on said Grant Placer Mining Claim, in the usual and ordinary methods of mining.

IX.

That defendants' right to work said mining claim by virtue of the location and appropriation of the same by the lessors under whom they claim and their grantors and predecessors in interest is long prior in time and right to any appropriation of the waters of Moonlight Spring or Moonlight Creek [470] by the plaintiffs or their grantors and predecessors in interest, and by reason thereof, and by reason of the manner in which the dam or receiving reservoir has been conducted, operated and maintained by the

plaintiffs, plaintiffs are estopped from claiming or asserting that they have been or are damaged or injured by the working and operating of said mining claim by the defendants.

WHEREFORE, defendants pray that they may go hence dismissed with their costs and disbursements.

PACKWOOD & GRIMM,
Defendants' Attorneys.

United States of America,
District of Alaska,—ss.

I, C. T. Howard, being first duly sworn, depose and say: I am one of the defendants in the above-entitled action; that I know the contents of the foregoing answer, and the same is true as I verily believe.

C. T. HOWARD.

Subscribed and sworn to before me this 18th day of June, 1903.

[Seal]

E. GRIMM,
Notary Public Dist. of Alaska.

United States of America,
District of Alaska,—ss.

Due and legal service of the within Answer is hereby acknowledged this 19th day of June, 1903.

IRA D. ORTON,
By JAS. W. BELL,
Attorneys for Plaintiffs. [471]

Mr. GILMORE.—I also offer the reply of the plaintiffs in the same action, No. 921, verified on the 12th day of January, 1904, for the same purpose, showing what the issues in that action were and

showing that the Pioneer Mining Company stood by and did not litigate its title or assert its title at that time.

Mr. COCHRAN.—Objected to for the same reason as stated in the offer to the answer.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

Mr. GILMORE.—I ask leave to have the exhibit marked for identification.

The COURT.—It may be marked Defendants' Exhibit 63 for Identification; said exhibit being as follows:

Defendants' Exhibit No. 63.

*In the United States District Court for the District
of Alaska, Second Division.*

JAFET LINDEBERG et al.,

Plaintiffs,

vs.

GEORGE DOVERSPIKE et al.,

Defendants.

Reply.

Come now the plaintiffs in the above-entitled action and for reply to the further separate and affirmative defense [472] to plaintiffs' complaint set forth in defendants' answer allege and deny as follows:

I.

Deny that they, or any of them, have any knowledge or information sufficient to form a belief as to the allegations of paragraphs I and II of said sepa-

rate and affirmative defense, and therefore deny each and every allegation of each of said paragraphs.

II.

And upon like ground plaintiffs deny all the allegations of paragraph III of said separate and affirmative defense, except the allegation that the alleged Grant Placer Mining Claim is upon ground higher in elevation than said Moonlight Springs.

III.

Deny all the allegations of paragraph IV of said separate and affirmative defense.

IV.

Answering paragraphs V and VI of said separate answer and defense the said plaintiffs deny that their said pipe-line is constructed only to a point about 300 feet below said Moonlight Springs, but on the contrary allege that said dam is constructed immediately below the point where said Moonlight Springs collect together to form Moonlight Creek; deny that the dam of plaintiffs is constructed from mud and that the same is built in a low or marshy place. Plaintiffs admit that said dam, so constructed, operated and maintained by plaintiffs, receives the waters from Moonlight Springs and Moonlight Creek but deny that the same receives all the surface and seepage water from the Grant Placer Mining Claim. Plaintiffs allege that from unavoidable natural causes some surface and seepage [473] water from the southern slope of Anvil Mountain does flow into Moonlight Creek and thence into the reservoir made by plaintiffs' dam, but plaintiffs deny that any of the surface or seepage water which naturally flows

into said reservoir is in its natural state impure, discolored or unwholesome or that the same pollutes or contaminates the waters of Moonlight Creek or Moonlight Springs.

V.

Plaintiffs deny each and every allegation of paragraph VI of said separate and affirmative defense.

VI.

Plaintiffs deny each and every allegation of paragraph VII of said separate and affirmative defense except the allegation that the "said water used by defendants was and is surface water, caused from the melting of the snow on the Slope of Anvil Mountain," but deny that the same is not fit for domestic or culinary purposes.

VII.

Deny each and every allegation of paragraph IX of said separate and affirmative defense.

Further replying to said separate and affirmative defense, plaintiffs allege that their said reservoir is constructed at the only possible point on said Moonlight Creek where the waters of said springs can be collected at one point; that its dam is properly constructed and only of sufficient length and height to impound the waters of said creek and [474] springs. That the defendants can, at small cost, by constructing ditches, flumes and sluice-boxes of sufficient length convey their muddy, discolored and polluted water, tailings and debris to a point where the same will flow away from plaintiffs' dam.

IRA D. ORTON,
Attorneys for Plaintiffs.

United States of America,
District of Alaska,—ss.

Ira D. Orton, being first duly sworn, deposes and says:

That he is the attorney for the plaintiffs in the above-entitled action; that he has read the foregoing reply and knows the contents thereof and believes the same to be true and the reason why this affidavit is made by affiant instead of by one of the plaintiffs personally is because the plaintiffs are all absent from the District of Alaska and for that reason unable to make the same.

IRA D. ORTON.

Subscribed and sworn to before me this 12th day of January, 1904.

[Seal]

VIOLA C. ORTON,

Notary Public, District of Alaska.

Mr. GILMORE.—I also offer in evidence the decree in the same cause, No. 921, bearing date February 21, 1904. I offer it for the purpose of showing that it was adjudicated and decreed by the Court that the defendants were the owners by virtue of a leasehold estate from the defendant, Pacific Coal & Transportation Company to the ground in controversy.

Mr. COCHRAN.—We object to it for the same reason stated to the previous offers of the complaint, [475] answer and reply, that it is wholly irrelevant, immaterial and incompetent and not binding on the plaintiff.

The COURT.—Objection sustained. To which

ruling of the Court the defendants then and there excepted and the exception was allowed.

Mr. GILMORE.—I ask leave to have the exhibit marked for identification.

The COURT.—It may be marked Defendants' Exhibit 64 for Identification; said exhibit being as follows:

Defendants' Exhibit No. 64.

*In the United States District Court for the District
of Alaska, Second Division.*

JAFET LINDEBERG, ERIC O. LINDBLOM
and JOHN BRINTESON, Copartners, Do-
ing Business Under the Firm Name and Style
of the MOONLIGHT SPRINGS WATER
COMPANY,

Plaintiffs,

vs.

GEORGE DOVERSPIKE, GEORGE CRAW-
FORD, FRED WILLIAMS, JOHN DOE,
RICHARD ROE and PETER COE,

Defendants.

Decree.

On this day this cause came on to be heard upon the motion of the defendants C. T. Howard, George Doverspike, George Crawford and Fred Williams, for a decree herein according to the opinion of the Court on file and of record in this cause, the plaintiffs appearing by Ira D. Orton their attorney, and the defendants appearing by William H. Packwood their attorney, and the Court having on the 23d day of February, 1904, made and filed his opinion in writ-

ing herein, which said opinion fully sets forth the facts and conclusions of law upon which the same [476] is based, and the Court having heard the testimony in said cause, and the argument of counsel for the respective parties, and being at this time fully advised in the premises,

It is hereby CONSIDERED, ORDERED, ADJUDGED and DECREED that the plaintiffs are not entitled to an injunction herein restraining and enjoining the defendants or either of them from working, mining and sluicing upon that certain placer mining claim known as the Grant Placer Mining Claim, situated above and adjoining the Moonlight Placer Mining Claim, in the Cape Nome Mining and Recording District, in the District of Alaska, and which said claim is situated above the Moonlight Springs and water right of the plaintiffs.

It is therefore CONSIDERED, ORDERED, ADJUDGED and DECREED that the plaintiffs' application for an injunction in this cause be and the same is hereby denied, and the cause dismissed, and it is further considered, ordered and adjudged that defendants have judgment against the plaintiffs for their costs and disbursements herein taxed at \$——, and that execution issue therefor.

It is further CONSIDERED, ORDERED and ADJUDGED that this decree be entered *nunc pro tunc* as of the date of the filing and entry of said opinion and findings, to wit, the 23d day of February, 1904.

ALFRED S. MOORE,
United States District Judge.

(Testimony of M. D. McCumber.)

Mr. GILMORE.—It is admitted in the reply in the present action that the subsequent litigation took place as alleged in our answers and we will not offer any further proof on that point. [477]

**[Testimony of M. D. McCumber, for Defendants
(Recalled).]**

M. D. McCUMBER, recalled, testimony for defendants.

Direct Examination by Mr. GILMORE.

I am one of the defendants in this case. I am assistant postmaster at Nome, Alaska. At the present time I am acting postmaster. I know the Grant claim. I have performed and caused work to be performed on the Grant claim in the years 1908, 1909, 1910 and 1911. I first caused work to be performed on the Grant claim in 1908 under a contract with S. L. Fox and Ben Hersey. I know of my own knowledge what work was done by them there. They sunk a shaft through frozen gravel about 18 feet, and they sank into slide rock about six feet and did some prospecting down in the southwestern corner. The southwestern corner is in the ground in controversy in this action. Fox and Hersey continued to work for me on the Grant claim until the spring of 1909. I paid them for their work. I was working on the Grant claim under a written lease from the defendant, Pacific Coal & Transportation Company. I caused further work to be done on the Grant claim in the fall and winter of 1909. Adolph Meyer and Theodore Pelitsch had a sublease on 150

(Testimony of M. D. McCumber.)

feet square in the southwest corner. They sank several shafts in the southwest corner. They placed a cabin on the Grant claim at my request. It was a frame cabin. It is a red cabin and stands out on the claim at the present time. It is indicated on defendants' map, Exhibit 11, by the word "cabin." The cabin was placed in November, 1909, where it is now, within the ground now in controversy. I have been on the Grant claim many times since November 30, 1909. I could not tell how many times, a good many. That red cabin has never been moved from where it was first placed on the 30th day of November, 1909, to the present time. It was placed there by [478] W. J. Rowe, in the fall of 1909. Meyer and his associates sank several shafts for me in the southwest corner; they averaged from eleven to sixteen feet in depth. In the spring of 1910, between January and May, there was a great deal of work done in the southwest corner of the Grant claim. The work was done by Adolph Meyer, Albert Miller, Captain Anson, Henry Kern, Louis Kern, a Russian, and one or two other men, I can't recall their names. The general character of the work done by these laborers was sinking shafts. In the spring of 1910 they dug two shafts in the southwest corner within the ground in controversy. I was present on the ground a great many times during that time. The first shaft was about 27 feet, and the second one was 34 feet deep. The machinery that they used was three boilers and four pumps. The machinery used was visible to anyone passing

(Testimony of M. D. McCumber.)

across the ground in that vicinity. They ceased work on those shafts about the last days of April, to my recollection. It was about the breaking-up time of the season; the spring was coming on. Thawing had set in, the roads were going to pieces and the water was coming and so on. It was not practicable to continue the work that they were doing at that time.

Q. What was done, if you know of your own knowledge, with reference to your shaft or shafts at that place, with reference to preserving them, if anything was done?

A. Well, after the machinery was removed, I had Mr. Meyer timber the shaft over for protection.

Q. For what purpose?

A. Why, to have it in shape so we could continue the following fall. (Continuing:) I know of my own knowledge that pay was found in the shaft; I panned there myself, and found all the way from five to ten cents; when we got down to the 29 [479] foot level, up to \$1.50 to \$2.00 a pan at the lower level. The only actual pan that I absolutely know is one that I brought in and had Mr. Kolash weigh, that was approximately \$1.40. That was the only one I weighed, the rest I guessed at only. The pumps were not the kind that I wanted; they were second hand, some of them, and we couldn't handle the water. They were simply borrowed or rented pumps to use there at the time. Mr. Allison Bruner was the agent of the Pacific Coal & Transportation Company, looking after their ground during the summer and fall of

(Testimony of M. D. McCumber.)

1910. I made arrangements with him that I could cease operations until November, 1910.

Q. State whether or not you made any arrangements to resume work on the 1st of November, 1910.

A. I did.

Q. What did you do, Mr. McCumber, towards resuming your work?

A. Let me understand the question.

Q. What arrangements did you make to resume your work before the first of November—did you send anybody to the ground or cause anybody to go to the Grant Claim?

A. I caused a man to go to the ground.

Q. Who? A. Adolph Meyer.

Q. Do you know what day he went to the ground?

A. I do.

Q. When? A. The 27th day of October, 1910.

Q. How long did he continue out there representing you on the ground, the Grant claim?

A. All that winter and the next spring. (Continuing:) I believe it was April 30, 1911, when he ceased. [480]

Q. Who, if anyone succeeded him?

A. J. W. Charles.

Q. Is anyone living on the ground in controversy to-day?

Mr. COCHRAN.—Objected to as wholly irrelevant and immaterial.

Mr. GILMORE.—We take the position, if the Court please, we have a right to inform the Court of the question of possession up to the time of the

(Testimony of M. D. McCumber.)

trial, because one of the very material things the Court will have to consider is who was and is in possession of the ground in controversy. If your Honor deems, after hearing all the evidence, that you have jurisdiction of the case, certainly we have the right to show that we had possession on the day they instituted this suit, and maintained actual, physical possession from that time on to this day, and are to-day actually living on the ground in controversy at the time of this trial.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

Mr. GILMORE.—So as to get it in the record I would like to make an offer, briefly. I offer to show by the witness that the witness, Adolph Meyer, was representing this defendant on the ground till the first day of May, 1911; that he was succeeded by J. W. Charles who lived in the red cabin on the ground in controversy until the 7th day of [481] July, whereupon he was succeeded by Capt. George Smith who has ever since the 7th of July, and up until the present time, and now is, living on the ground in controversy; all this evidence offered for the purpose of showing our continued possession since and at the time and prior to the institution of this suit; and during that time we have carried on mining operations within the ground in controversy.

Mr. COCHRAN.—We object to the offer on the ground that it is wholly immaterial.

The COURT.—Objection sustained, to which rul-

(Testimony of M. D. McCumber.)

ing of the Court the defendants then and there accepted and the exception was allowed.

Q. Now, Mr. McCumber, do you know Mr. Louis Stevenson? A. I do.

Q. Did you know him the latter part of October, 1910, just prior to the 1st day of November, 1910?

A. Yes, sir. (Continuing:) I had a conversation with him in November, 1910, in the postoffice in Nome, with reference to the ground in controversy. The conversation was just prior to the first day of November, 1910. It was just before this suit was instituted. We talked about the ground in controversy. Mr. Stevenson came into the post-office and he spoke to me and said: "I see you started operations." I said, "Yes" and then he said, "Mr. Lindeberg was coming in to see you before he left about that matter." I said, "Mr. Lindeberg has not been in to see me." And then we talked with reference to my operations, what I was contemplating doing, using the pump, and I told him so. I told him I was going to freeze the ground and [482] use a pump. He seemed surprised that Mr. Lindeberg had not seen me.

Q. Now, Mr. McCumber, how do you fix the date as being prior to the 1st of November, 1910?

A. Because I got a little suspicious and had my lease recorded.

Q. And when did you record your lease?

A. The first day of November.

Q. Just examine the instrument I hand you and state, if you know, what it is.

(Testimony of M. D. McCumber.)

A. Yes, it is a lease from the Pacific Coal & Transportation Company to myself. (Continuing:) It is the original lease. That is my signature and the signature of John T. Reed; also the signatures of Mr. John F. Smith and F. J. Kolash the witness. The original lease was modified and the modification was in writing and was attached to the original lease, being the last page. Those are the original signatures of the parties named in it.

Mr. GILMORE.—I offer the lease and the modification attached to it, together with the filing marks of the recorder.

The COURT.—It may be received in evidence and marked Defendants' Exhibit 65; said lease being as follows:

Defendants' Exhibit No. 65.

MINING CLAIM LEASE.

THIS INDENTURE, made and entered into this fifteenth day of August, A. D. 1908, by and between the PACIFIC COAL & TRANSPORTATION COMPANY, a corporation organized and existing under and by virtue of the laws of the State of Maine, and [483] doing business in the District of Alaska, party of the first part, hereinafter called the lessor, and MENZO D. McCUMBER, of Nome, District of Alaska, party of the second part, hereinafter called the lessee:—

WITNESSETH: That the said lessor, for and in consideration of the rents, royalties, covenants and agreements hereinafter reserved, and by the said lessee to be paid, kept and performed, has granted,

demised, leased and let and by these presents does grant, demise, lease and let unto the said lessee, that certain mine and mining property situate in the Cape Nome Mining and Recording District, District of Alaska, and more particularly described as follows, to wit:—

Bench claim number one (1) at Western base of Anvil mountain, also known as and called “MOON-LIGHT” or “GRANT” claim, containing twenty (20) acres, being the same claim located by W. N. Grant, on January 9, 1899, notice of location of which said claim is recorded in the office of the Recorder of the Cape Nome Mining and Recording District, in Book 3, page 59, Together with the appurtenances, and rights and privileges to prospect the same for gold, precious metals and minerals, and to mine and extract the same, and reduce the same to any commercial value.

TO HAVE AND TO HOLD, unto the said lessee for the term of three (3) years from the first day of October, A. D. 1908, expiring at noon on the first day of October, A. D. 1911, unless sooner forfeited or determined through the violation of any covenant hereinafter against the said lessee reserved.

And in consideration of the said lease, demise and privileges, the said lessee does hereby covenant and agree with the said lessor, as follows, to wit:

To enter upon said mining claim and premises and work the same mining fashion, in manner necessary to good economical mining, so as to take out the greatest amount of gold, precious metals and minerals possible with due regard to the safety, develop-

ment and preservation of the said premises as a workable mine.

To work and mine said premises as aforesaid as steadily and continuously from the date of this lease as weather and the season of the year will permit.

To keep all sluices, ditches, drains, waterways and passageways cleared of loose rock and rubbish, and to do all things necessary to promote the usefulness of said mining property as a workable mine, and to develop the same and do no act thereon during the term of this lease, which would impede mining operations or impair the operating condition of said mining claim, and generally to so conduct operations as to conform to the laws of the United States and the District of Alaska, and the local rules and regulations of miners in said mining district, and to do no act and suffer no default which might in any manner involve the said lessor or its ownership in said mining property, in liability of any kind or character.

To not locate or record said mining property, or allow the same to be recorded by anyone except the said lessor or its agent. To not allow or permit any person or persons, except the said lessee, his agent or workmen, to take or hold possession of said premises, or any part thereof, under any pretense whatever. [484]

To not assign this lease, or any interest thereunder and to not sublet the said premises, or any part thereof, without the written consent of said lessor, or John T. Reed, its agent, in Nome, Alaska.

To pay and deliver to said lessor, as royalty and

rent twenty-five (25) per cent of all gold, minerals and precious metals to be extracted from said premises during said term, of like assay as that retained by said lessee, at such place as said lessor or its agent shall direct, and to allow said lessor or its agent or representative to be present at each and every cleanup, and to inspect and examine the same.

To deliver up to said lessor the said premises with the appurtenances and improvements, except machinery, buildings, tools and implements placed thereon by the lessee, to the said lessor in good order and condition and the mine in all points ready for continued working (accidents not arising from negligence alone excusing) without demand or further notice, on said first day of October A. D. 1911, at noon, or at any time previous, upon demand for forfeiture.

The lessee hereby agrees to do at least one hundred dollars' worth of work during the year 1908, as assessment work for said year 1908, upon said claim, hereby leased.

The right is hereby reserved by the lessor or its agent or representative, to enter upon and over said property hereby leased, at all reasonable times for the purpose of inspection.

Finally, upon the violation or failure to perform by said lessee, or any person or persons under him, of any covenant or covenants hereinbefore reserved, the term of this lease, and all the rights and privileges thereunder, shall, at the option of said lessor, expire and the same and said premises with the appurtenances shall at once become forfeit to said

lessor, and the said lessor or its agent or representative may thereupon, at the demand of possession in writing to be delivered to said lessee, or in his absence by posting said demand in a conspicuous place on said leased premises for the term of three days, enter upon said premises and dispossess all persons occupying the same, with or without force, and with or without process of law; or, at the option of said lessor, the said lessee and all persons found in occupation may be proceeded against as trespassers from the beginning of said term, both as to realty and the metals and minerals severed therefrom; or as guilty of unlawful detainer.

Each and every clause and covenant of this indenture shall extend to the heirs, executors, administrators and successors of all parties hereto; and to the assigns or successors of said lessor; and as said lessor may elect to the assigns of said lessee.

IN WITNESS WHEREOF, the said parties hereto, lessor and lessee, have hereunto set their hands and seals, to duplicates hereof, the day and year first above written.

PACIFIC COAL & TRANSPORTATION
COMPANY. [Seal]

By ALBERT MERRILL,

President.

And ALONZO ELLIOTT,

Treasurer.

MENZO D. McCUMBER. [Seal]

Signed, sealed and delivered in the presence of

JOHN T. REED,

As to Menzo D. McCumber. [485]

United States of America,
District of Alaska,
Second Division,—ss.

On this fifteenth day of August, A. D. 1908, before me, the undersigned, a Notary Public in and for the District of Alaska, residing at Nome therein, appeared the within named MENZO D. McCUMBER, to me known to be the identical person mentioned in and who executed the foregoing instrument, and acknowledged to me that he executed the same for the uses and purposes therein expressed.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my Notarial seal, the day and year in this certifietae first above written.

[Seal] JOHN T. REED,
Notary Public in and for the District of Alaska, Residing at Nome, Alaska.

For and in consideration of the sum of One (\$1.00) dollar to the PACIFIC COAL & TRANSPORTATION COMPANY, a corporation, lessor in the foregoing lease, paid this first day of May, 1909, by MENZO D. McCUMBER, LESSEE therein, the receipt whereof is hereby acknowledged, and in further consideration of the said Menzo D. McCumber doing at least One hundred (\$100.00) dollars' worth of work upon said leased premises during each of the years 1909, 1910, 1911, 1912, and 1913, as assessment work thereon for each of said years, and furnishing said lessor, or John T. Reed,

its agent in Alaska, with duly verified proof thereof, the term of the foregoing lease with all its terms and conditions and all the rights and privileges thereunder, save as hereinafter modified, is hereby extended for the period of two (2) years from the first day of October, 1911, expiring at noon on the first day of October, 1913, unless sooner forfeited or determined through the violation of any covenant in said lease against the same lessee, M. D. McCumber, reserved.

IT IS HEREBY AGREED, that the said Menzo D. McCumber, lessee in said lease may, if he so desires, cease operations on said mining claim from this first day of May, 1909, until the fifteenth day of November, 1909, on which latter date he shall resume operations on the mining ground and premises mentioned in the foregoing lease, to wit: the "Moonlight" or "Grant" mining claim, and continue operations thereon according to the terms and conditions of the said lease.

IN WITNESS WHEREOF, the parties hereto, lessor and lessee, have hereunto set their hands and seals, this first day of May, 1909.

PACIFIC COAL & TRANSPORTATION
COMPANY, a Corporation. [Seal]

By JOHN T. REED, .

Its Agent in Alaska.

M. D. McCUMBER. [Seal]

Signed, sealed and delivered in the presence of

JOHN F. SMITH.

F. J. KOLASH.

(Testimony of M. D. McCumber.)

Filed for record at request of M. D. McCumber, Nov. 1, 1910, at 40 minutes past 2 o'clock, and recorded in book 181, page 309, Records Cape Nome Recording District, Alaska.

GEO. D. SCHOFIELD.

By W. W. Sale,
Deputy.

15 Folios, 3 Ind., \$7.25 paid. [486]

Q. Now, Mr. McCumber, please examine this exhibit which I hand you and state, if you know, what that is.

A. It is an extension of the original lease. (Continuing:) That is my signature and the signature of Mr. Bruner as attorney in fact for the defendant Pacific Coal & Transportation Company.

Mr. GILMORE.—I offer this in evidence, if the Court please, being the extension of the original lease.

Mr. COCHRAN.—Objected to as being incompetent and no authority is shown in J. Allison Bruner to execute the instrument.

The COURT.—I think if you have the means at hand of proving the authority, Mr. Gilmore, you should do so before offering it.

Mr. GILMORE.—I will ask to have the instrument identified and produce the proof later.

The COURT.—It may be marked Defendants' Exhibit 66 for Identification.

Q. Who, if anyone, did you have on the Grant claim on and prior to the 7th of November, 1910, within the ground in controversy?

(Testimony of M. D. McCumber.)

A. Adolph Meyer. (Continuing:) The work that I caused to be done in 1908 and 1909 by Hersey and Fox, was of the value of one thousand dollars.

Q. What was the value of the work done by you, if you know, between the 30th day of November, 1909, and the time of the institution of this suit, November 7th, 1910, on the ground in controversy in this action?

Mr. COCHRAN.—Objected to as irrelevant and immaterial, the witness not showing himself competent or qualified to answer. [487]

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

Q. Mr. McCumber, do you know the amounts of money that were paid for the work done by you or caused to be done by you on the Grant claim between the 30th of November, 1909, and the 7th of November, 1910, do you know the value of the labor and whatever items of expense were expended during that time? A. Well, something like.

Q. Just yes or no; do you know of your own personal knowledge how much?

A. Why not exactly, if that is what you mean.

Q. Who paid the bills? A. I did.

Q. And how much did you expend in money on the ground in controversy during that period for labor, supplies, material and other things, approximately? A. \$1800.00.

Q. Do you remember the occasion, Mr. McCumber, of the purchase of some building paper on or about

(Testimony of M. D. McCumber.)

December 6th, 1910, at Carlton's hardware store in Nome?

A. I remember that Mr. Meyer wanted to get some building paper, and I told him to go and get it.

Q. Do you know whether or not that paper had anything whatever to do with the ground in controversy?

A. Not to my knowledge. I don't know what he did with it, he might have used it there or somewhere else for all I know.

Q. Do you remember the occasion of Mr. Meyer taking a stove to the Grant claim? [488]

A. I do.

Q. On October 27, 1910? A. I do.

Q. What did you have to do with it, if you remember?

A. I helped lift the stove on the sled. (Continuing:) It was on the 27th of October, at noon. Meyer got the stove at my house.

I know Arthur Gibson. I knew him in 1908. I was upon the Grant claim with him at that time. At that time on the ground in controversy Gibson stated to me in substance as follows: "I can't understand how No. 1 Bench Claim could overlap the Moonlight claim, the Good Luck Claim and the Jerome Fraction is there too." (Indicating with his hand while he spoke.) He made that statement voluntarily to me.

Q. Did he state to you at that time, Mr. McCumber, words to this effect: "I told him to stay off the ground in controversy and save his money?"

(Testimony of M. D. McCumber.)

A. No, sir, he did not make that statement. He said I would have trouble if I went down on the lower corner and did any work.

Cross-examination.

By Mr. COCHRAN.—Now, what were you and Mr. Gibson doing out there in 1908?

A. Well, sir, I wasn't sure as to the corners of the Grant claim. (Continuing:) And Mr. Gibson had surveyed it and when I had my lease I wanted to be absolutely sure that I was all right on the ground, within the boundaries of the Grant and I knew Mr. Gibson could show me exactly. I spoke to him about it and he said he was going out there in a few days and would let me know when he went so I could go along with him at that time. He showed me where the boundaries of the Grant [489] claim were. He showed me where he said I would have trouble if I went to work. I think he showed me the Moonlight Bench stakes upon the Grant claim, the upper stakes within the boundaries of the Grant claim as marked. I think I saw them and knew at that time where they were. That was in September, 1908. I did not ask Mr. Gibson about the conflicting claims more than what was said. We talked about the conflict of No. 1 Bench. I didn't know about any conflict with No. 1 Bench until that time. That was before I had done anything at all upon the Grant claim. I believe Mr. Gibson made a plat showing the conflicts of the mining claims with the Grant claim, at the request of John T. Reed. I suppose it was for my benefit. I got the plat, I think I have

(Testimony of M. D. McCumber.)

it over in my office. The plat shows the conflict of No. 1 Bench with the Grant claim. I got that plat about the 25th of July, 1908. It was about the time I got the lease. It was before I did any work on the claim. I think the date was July 25th. I was not on the claim in the month of October, 1910. I cannot recall whether I was there in November or not. I don't think so but I made many trips out there after the suit was commenced. The suit was begun on the 7th of November, 1910. I was out there prior to that time; I was out there two or three times during the summer. I made a point of going out there once or twice a month and looking it over. I was not there during the month of October.

Q. You don't know of your own knowledge whether Adolph Meyer was there or not?

A. I have every reason to believe he was. (Continuing:) I wasn't on the ground, if that is what you are getting at, I didn't see him there between the 7th of October and the 7th of November. I hired him to be there and paid him for it. I didn't see him on the ground. I paid for the building paper [490] Adolph Meyer got on the 6th of December, at Carlton's. I don't know whether that was for his personal account or not.

Q. Now, you talked with Mr. Stevenson in the post-office? A. Yes, sir.

Q. And Mr. Stevenson said, "I see you have commenced operations on the claim," did he?

A. Yes, sir.

(Testimony of M. D. McCumber.)

Q. You hadn't commenced operations on the claim?

A. Yes, I had; I had sent Meyer out; he had been there for two or three days, for Stevenson knew it.

Q. Isn't it a fact that Stevenson asked you whether you were going to commence work?

A. He didn't say any such thing.

Q. He told you that he saw you had commenced work?

A. He said: "I see you have commenced work out there," meaning the Grant claim.

Q. And you told him that you had?

A. Yes, sir.

Q. Did you give me all that conversation that you had with Mr. Stevenson in the postoffice?

A. Well, we talked about my putting a plant out there; I was going to freeze the ground, was negotiating for pumps. (Witness continuing:) I told him I was contemplating it. He did not tell me that they would not let me do it. I did not ask Mr. Stevenson for Mr. Lindeberg's address. He was in the postoffice in the spring a couple of times. It was in April, perhaps. I asked him then for Mr. Lindeberg's address. I was thinking of wiring him.

Q. Of wiring to him to see if you couldn't get a lease from the Pioneer Mining Company on its ground in controversy? [491] A. A lease?

Q. Yes?

A. No, I couldn't take a lease from them.

Q. Didn't you ask Mr. Stevenson for a lease?

(Testimony of M. D. McCumber.)

A. No, sir, I didn't ask Mr. Stevenson for a lease.

Q. Didn't you state to Mr. Stevenson at the time you had this conversation, that you asked him for Mr. Lindeberg's address, saying that you wanted to wire Mr. Lindeberg and see if you couldn't get a lease on this ground in controversy, and put the royalty in escrow? A. No, sir, not at that time.

Q. Did you have such a conversation prior to the commencement of this suit?

A. Positively I did not. I couldn't recognize any other title under my lease. (Continuing:) The expenditures that I have testified to were made in trying to get down to the pay; they were not made in taking out pay. We had three boilers on the ground; they were rented and they are not there now. We had four pumps out there. They were borrowed or rented pumps and we returned them.

Q. So there is nothing out there now except prospect holes?

A. I think there are some other tools out there, picks and shovels, buckets and such things as that.

Q. You have got some picks and shovels stored in the cabin? A. Yes.

Q. That is all the tools you got?

A. Yes, such things as that, that is all.

Adolph Meyer had a sort of a sublease for a short time. He was interested with me at that time. He was interested with me from 1909 until the first of July, 1910. The expenditures that I estimated include the actual expense, including the time of the workmen. I paid one-half of Meyer's time. [492]

(Testimony of M. D. McCumber.)

It was all included in the \$1800.00 that I mentioned. Gibson told me that I would have some trouble; he didn't say Bench claim No. 1; he said the lower part of the Grant claim. Referring to the part in controversy.

Q. You never went to see Mr. Lindeberg or any officer of the Pioneer Mining Company as to what they claimed or what they asserted to own in the ground?

A. I didn't think I had to. (Continuing:) I don't know whether I looked at the records of locations or not. I didn't look at the records of Bench No. 1. I didn't think it was necessary. The thousand dollars expense that I mentioned was spent on a rock shaft that was sunk about 84 feet deep. That was not on the ground in controversy, it was near figure 9 on the map; it was near the ground in controversy.

Redirect Examination.

(By Mr. GILMORE.)

Q. Now, Mr. McCumber, you were telling counsel about negotiations for some pumps and work at the time this suit was instituted, and they didn't give you a chance to finish, what negotiations were you having at that time?

A. I was negotiating with Mr. Brower and George Walker about drilling and freezing, putting on a freezing plant, and then putting on a Cornish pump. Mr. Brower was to go on and he assured me he could handle all the water that was running there and do

(Testimony of M. D. McCumber.)

it much cheaper than I had pumped the year previous.

Q. Were these negotiations prior or subsequent to the bringing of this suit?

Mr. COCHRAN.—Objected to as irrelevant and immaterial. [493]

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

Q. Now, Mr. McCumber, did you hear Adolph Meyer testify with reference to getting some building paper from you along the latter part of October or first of November? A. Yes, sir.

Q. State whether or not you did furnish him some building paper at that time. A. I did.

Q. Had that anything to do with the paper purchased at Carlton's hardware store, if any was purchased there, on the 6th of December?

A. No, absolutely not.

Q. Please state to the Court whether or not the Pioneer Mining Company ever, through any of its agents, attempted to buy your title to the ground in controversy, prior to the institution of this suit.

Mr. SCHOFIELD.—Objected to as immaterial.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

Mr. GILMORE.—I offer to show by the witness that the Pioneer Mining Company attempted to buy the defendants' title to the ground in controversy, prior to the 7th day of November, 1910, the date

(Testimony of M. D. McCumber.)

upon which this suit was instituted, thereby recognizing the defendants' title to the ground in controversy.

Mr. COCHRAN.—We object to the offer as irrelevant and immaterial.

The COURT.—Objection sustained. [494]

Testimony of J. Allison Bruner, for Defendants.

J. ALISON BRUNER, a witness on behalf of defendants, being first duly sworn, testified as follows:

Direct Examination by Mr. GILMORE.

My name is J. Allison Bruner.

Q. Mr. Bruner, please examine this exhibit I hand you and tell me, if you know, what it is.

A. Yes, sir. (Continuing:) It is a power of attorney received by me from the Pacific Coal & Transportation Company. It is the original that was signed, executed and delivered to me.

Mr. GILMORE.—I offer it in evidence, if the Court please, being general power of attorney, Pacific Coal & Transportation Company to the witness J. Allison Bruner, dated December 31, 1910.

The COURT.—It may be received in evidence and marked Defendants' Exhibit 67; said exhibit being as follows:

Defendants' Exhibit No. 67.

KNOW ALL MEN BY THESE PRESENTS,
That the Pacific Coal & Transportation Co., a corporation organized and existing under the laws of the State of Maine, and located at Portland in the County of Cumberland, in said State, hereby consti-

tutes and appoints J. Allison Bruner of Nome, Alaska, its true and lawful Attorney for it and its name and stead, to commence, prosecute, or enforce, or to defend, answer, or oppose, all actions or legal proceedings touching any of the matters in which said Pacific Coal & Transportation Co. is or may hereafter be interested or concerned; and also, if he shall deem best, to compromise, refer to arbitration, or submit to judgment in any such actions or proceedings; and generally to act as its attorney or agent at Nome or in any other part of Alaska aforesaid in relation to any and all matters in which said Pacific Coal & Transportation Co. may be interested or concerned, and on its behalf to execute all such instruments, and to do all such acts and things, as fully and effectually in all respects as said Company could do.

And said Pacific Coal & Transportation Co., its successors and assigns, ratify and confirm, and agree to ratify [495] and confirm, whatsoever its said Attorney may do by virtue of these presents.

IN WITNESS WHEREOF, the Pacific Coal & Transportation Co. has caused these presents to be executed in its behalf by Albert Merrill, its President, hereunto duly authorized, and its corporate seal to be hereto affixed this 31st day of December, in the year of our Lord one thousand nine hundred and ten.

[Corporate Seal]

PACIFIC COAL & TRANSPORTATION CO.,

By ALBERT MERRILL,

President.

(Testimony of J. Allison Bruner.)

Personally appeared the above-named Albert Merrill, and acknowledged the foregoing instrument by him signed to be his free act and deed, and the free act and deed of the Pacific Coal & Transportation Co.

State of New Hampshire,
Hillsborough,—ss.

I, John C. Bickford, Clerk of the Police Court of the City of Manchester, hereby certify that said Court is a Court of Record in and for said County and State and that John C. Bickford before whom the annexed instrument was executed is a Notary Public for said State, duly commissioned and sworn according to law and all his official acts as such are entitled to full faith and credit, and I verily believe that his signature written thereon is genuine, that he is duly authorized by law to take such acknowledgment.

In witness whereof I hereunto set my hand and affix the seal of said Court this 31st day of December, 1910.

[Seal]

JOHN C. BICKFORD,

Clerk of Police Court, City of Manchester.

Q. Will you examine this instrument, extension of the McCumber lease, which has been marked for Identification, is that your signature?

A. Yes, sir. (Continuing:) I executed that on behalf of the Pacific Coal & Transportation Co.

Mr. GILMORE.—I now reoffer in evidence the extension of the McCumber lease heretofore marked for Identification.

The COURT.—It may be received in evidence marked Defendants' Exhibit 66; said exhibit being as follows: [496]

Defendants' Exhibit No. 66.

MEMORANDUM OF AGREEMENT.

MEMORANDUM OF AGREEMENT, Made and entered into this 28th day of April, 1911, by and between the PACIFIC COAL & TRANSPORTATION COMPANY, a corporation, party of the first part, and MENZO D. McCUMBER, party of the second part, WITNESSETH:

WHEREAS, the party of the first part did on August 15th, 1908, make, execute and deliver unto the party of the second part a certain indenture of lease demising, leasing and letting to said second party all of that certain placer mining claim known as and called BENCH CLAIM No. 1, at the western base of Anvil Mountain, also known as and called "MOONLIGHT" or "GRANT" claim, containing about twenty (20) acres, being the same claim located by W. N. Grant on January 9th, 1899, the certificate of location of said claim being of record in book 3, page 59, and the amended certificate of record in volume 95, page 223 of the Cape Nome Mining & Recording District, District of Alaska, in which said precinct said claim is situated; and

WHEREAS, said party of the first part did extend thereafter, on the first day of May, 1909, by written instrument between the party of the first part and party of the second part, the term of said lease for a period of two (2) years, ending and expiring at noon on the first day of October, 1913; un-

der the terms and conditions of said written lease and said written extension; and

WHEREAS, since said last-mentioned date a certain suit has been commenced and is now pending in the District Court for the District of Alaska, Second Division, by the Pioneer Mining Company, a corporation, against both of the parties to this agreement, claiming in said action the ownership of most of the valuable portion of said placer claim above described; and

WHEREAS, said second party hereto represents that he is in possession of and has under his control certain evidence necessary and valuable to the successful defense of the said litigation for the purpose of establishing title to the whole of said claim in the party of the first part hereto; and

WHEREAS, it is the desire and intention of the parties hereto to modify the terms of said written lease and said written extension thereof above mentioned;

NOW, THEREFORE, for and in consideration of the mutual promises herein expressed and other considerations, it is agreed between the parties hereto as follows:

First. That said party of the second part shall secure the services of at least two (2) attorneys to assist in the preparation for and trial of said case above mentioned, or any other litigation that may arise involving the title to said claim during the lifetime of said lease, at his own expense and cost.

Second. That the party of the second part shall at his own expense and cost seek out and produce

at the trial of said cause such testimony, by deposition, documentary evidence or otherwise, as may be within his knowledge or control, or that may hereafter come within his knowledge or control. [497]

Third. That party of the first part agrees that said written lease and written extension thereof above mentioned shall be modified so that the same shall be and remain in full force and effect for a period of three (3) years after the termination of the aforesaid litigation, or after the final termination of the settlement of the title between said Pioneer Mining Company and party of the first part, and free of all litigation that may hereafter arise.

Fourth. That said party of the first part shall and will accept from said lessee, party of the second part, fifteen per cent (15%) of the gross amount of all gold and gold-dust taken and extracted from the said claim as royalty from the first forty thousand Dollars (\$40,000.00) of gold or gold-dust extracted therefrom, and thereafter twenty-five per cent (25%) of the gross amount of all gold or gold-dust taken or extracted from said claim during the lifetime of the lease.

Fifth. That in view of the fact that a vigorous prosecution of mining and mining development on said placer claim at the present time would entail a large expenditure of money by the lessee and while hampered by litigation and without benefit to the party of the first part, it is hereby agreed that the covenant in said written lease requiring said second party "to work and mine said premises as aforesaid, as steadily and continuously from the date of this

lease as weather and the season of the year will permit" is hereby waived by the party of the first part until the termination of the litigation between said Pioneer Mining Company and the party of the first part, and until the said title of the party of the first part to said placer claim is fully settled. That thereupon said second party shall, at any time between October 15th, and June 1st of each year, immediately commence mining operations upon said placer claim and prosecute the same vigorously and in the manner provided in said lease.

Sixth. That in all other respects said lease shall be and remain operative between the parties hereto.

Seventh. This agreement shall be binding upon the heirs, executors, administrators and assigns of the parties hereto.

IN WITNESS WHEREOF the parties have hereunto set their hands and seals the day and year first above written.

PACIFIC COAL & TRANSPORTATION
CO. [Seal]

By J. ALLISON BRUNER,
Its Attorney in Fact.

MENZO D. McCUMBER. [Seal]

Signed, sealed, and delivered in presence of

ELWOOD BRUNER.

WILLIAM A. GILMORE.

United States of America,
District of Alaska,—ss.

THIS IS TO CERTIFY that on this 28th day of April, 1911, personally appeared before me the undersigned [498] Notary Public in and for the

District of Alaska, Menzo D. McCumber, personally known to me to be the person named and described in the foregoing instrument, who executed the same and acknowledged to me that he executed the same for the uses and purposes therein mentioned.

Also at the same time and place appeared J. Allison Bruner, known to me to be the attorney in fact of the Pacific Coal & Transportation Company, a corporation, who executed the foregoing instrument by signing the name of the said Pacific Coal & Transportation Company, a corporation, as principal and his own name thereto as attorney in fact and acknowledged to me that he executed the same as such for the uses and purposes therein mentioned.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my Notarial seal the day and year first above written.

[Seal] WILLIAM A. GILMORE,
Notary Public in and for the District of Alaska, Re-
siding at Nome.

Mr. GILMORE.—Defendants rest.

Plaintiff's Rebuttal.

**Testimony of Levi Mathieson for Plaintiff
(Recalled).**

(By Mr. LOMEN.)

Q. You were in court when Adolph Meyer was testifying?

A. Yes, sir, I was. (Continuing:) I recognized him as being a man I had seen before by the way he walked. I saw him going up by the railroad track to the red cabin, on the 20th or 25th of November, 1910. When I say the red cabin I mean the red

(Testimony of Levi Mathieson.)

cabin on the Grant claim. It was along about the 20th or 25th of November. He came from down from the direction of Little Creek roadhouse. He came along the railroad track. I don't know where he came from, he was about 250 feet away from the railroad track, approximately, I was about 250 feet approximately 250 feet from him. He had a fellow with him. There were two of them. To the best of my knowledge I think they had five dogs. They had a sled and a load on the sled. He had something in the sled. I didn't notice whether he carried anything himself; he was walking ahead of the dogs part of the [499] way and going up over the railroad track to the cabin he was walking in front of the dogs. The other man was handling the sled. At that time there was a very little snow on the ground.

Q. On the 6th of November, when you were out there, how were the snow conditions?

A. Very little snow on the ground, very little.
[500]

**[Testimony of Arthur Gibson, for Plaintiff
(Recalled).]**

ARTHUR GIBSON, Recalled on Rebuttal.

Direct Examination by Mr. LOMEN.

Q. You testified that you made a survey in 1902, I think it was, for Mr. Kingsbury?

A. I did. (Continuing:) On September 30, 1902. I was on the Grant claim and saw Mr. Kingsbury at that time. Mr. C. L. Spanggard, A. W. Lane, and there was one or two other men that I did not get their names there at that time. I was pres-

(Testimony of Arthur Gibson.)

ent when Mr. Kingsbury's deposition was taken in this case. I heard the questions that were asked him and the answers that he made with reference to the surveying done at that time.

Q. What, if anything, was said by you in the presence of Mr. Kingsbury and others at the time you were upon the claim with reference to the surveying of No. 1 Bench Moonlight?

Mr. GILMORE.—Objected to as calling for hearsay evidence and not binding upon the defendants.

The COURT.—Objection overruled. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

A. I told Spanggard about Bench No. 1 overlapping the Moonlight claim, and he answered that he knew it overlapped the Moonlight claim some, but he did it to take in all of the vacant ground between the Nelson Bench and Moonlight Bench. (Continuing:) That was in the presence of Kingsbury, he was with us all the time; we were all together. Kingsbury said: "How can it be that Jensen was locator of No. 1 Bench and at the same time be a witness on his location?" or words to that effect.

Q. I will ask you if at the time of making that survey, Mr. Spanggard, in the presence of Mr. Kingsbury, identified [501] any of the corner stakes of the Moonlight Bench No. 1 Claim?

Mr. BRUNER.—Objected to as being irrelevant and immaterial.

The COURT.—Objection overruled. To which ruling of the Court the defendants then and there ex-

(Testimony of Arthur Gibson.)

cepted and the exception was allowed.

A. He did. (Continuing:) He identified the southwest corner and the northwest corner, and told the place where the southeast should be, and the northwest by approximate distance from other stakes on the ground, distances and directions.

Q. Were the stakes and corners pointed out by Mr. Spanggard at that time in the places surveyed by you and as shown on the map, Plaintiff's Exhibit "A"?

Mr. GILMORE.—Objected to as not rebuttal and immaterial.

The COURT.—Objection overruled. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

A. They were.

Q. Aside from being a civil engineer and surveyor what official employment have you?

A. I am Weather observer for Nome. (Continuing:) My superior officer is the U. S. Weather Bureau at Washington. I have been co-operative observer from July 1st, 1906, to April 1st, 1907; since then I have been special observer in the winter time.

Q. Have you the records of the precipitation on the 27th of October, 1910? A. I have. [502]

Q. Here at Nome?

A. Yes, sir. (Continuing:) On the 27th of October there was just a trace of snow, snow flurries.

Q. Had there been any snow in the fall of 1910 before that date?

A. There was a $\frac{1}{2}$ inch of snow, when it was 32

(Testimony of Arthur Gibson.)

degrees; it didn't stay on the ground.

Q. I asked you if there was any snow before that?

A. There had been previously some rain and snow together, and on the 31st of October was rain and snow, at a temperature of 34° above zero.

Q. Now, read from that on down until such time as you will find that there was snowfall sufficient in your notion to make sleighing.

A. November 1st rain and snow fall, a temperature of 34°. On the 2d, rain and snow falling at a temperature of 36° above zero. On the 3d, first snow falling under a temperature of 32°; the following day the temperature was 35° above zero; then there was some rain and snow falling on the 8th and 9th; both days the temperature was 28°. Water freezes at 32°. I gave the temperature of all of the days between the 27th of October and the 10th of November, but I did not give the precipitation. On the 27th of October the maximum temperature was 32° above, minimum 28; on the 28th the maximum 28 above, and minimum 18; on the 29th 26 above maximum and 14 above min. On the 30th, max. 30 above, min. 13; on the 31st, max. 35 above min. 24 above.

Q. Go on.

A. On Nov. 1, max. 34 above, min. 24; on the 2d max. 36 above, min. 32 above; 3d of November max. 32 above, min. 26 above; on November 4th, max. 35 above, min. 22 above; on Nov. 5th, max. 27 above, min. 14 above; [503] on the 6th, max. 28 above, min. 10 above; on the 7th, max. 22 above, min. 10 above; on the 8th, max. 28 above, min. 22 above; on

(Testimony of Arthur Gibson.)

the 9th of November max. 28 above, min. 22 above.

Cross-examination.

(By Mr. GILMORE.)

Q. Now, Mr. Gibson, there was a half inch of snow on the 26th of October, according to your record in Nome? A. Yes, sir.

Q. All of those records that you have read were taken at your place of business down on Front Street? A. Yes, sir.

Q. Did you make observations out in the country or along the trails between here and the Grant claim?

A. No.

Q. Now, is it not a fact that often when there is no snow on the streets of Nome visible around Nome, that there is quite a little snow between here and the foot-hills? A. There is very little difference.

Q. Is there not often snow when you are out surveying, is there not often an inch of snow or two inches out in the country when there is none around town?

A. No, not that much difference except in the spring of the year and the breakup.

Q. When the first snow falls, is it not a fact that the fall is often heavier in the foothills than it is around Nome?

A. It is up on the hills but not on the tundra.

Q. When did the freeze-up come in the fall of 1910, what date? [504]

A. Well, sluicing was stopped on the 3d of October.

Q. And the ground froze up solid then?

(Testimony of Arthur Gibson.)

A. It was frozen then but it thawed out again because the temperature was warmer. (Continuing:) It might not have thawed out as much as it froze. I could not tell about that. I think the ground was frozen solid about the 26th of October.

Q. Now you know from your experience, do you not, that it is customary for men handling dogs to use them on the ground as soon as the ground freezes in the fall, they don't always wait until it snows again?

A. If they are hauling a load they certainly do.

Q. I am not asking about loads; isn't it a fact that they commence using their dogs as soon as the freeze-up comes, you know that to be a fact from the custom of the country? A. I am not a dog man.

Q. You know it to be a fact of your own knowledge by reason of your going around the country?

Mr. SCHOFIELD.—Objected to as not cross-examination.

The COURT.—I don't believe he is qualified as a dog expert. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

Q. Was there a solitary day between the 26th of October and the 10th of November, when the minimum temperature was not below freezing, 32°?

A. It was 32° on the 2d of November the minimum.
[505]

Q. All other days during that period it was below 32°, the freezing point? A. Yes, sir.

Q. How many times a day did you read the tem-

(Testimony of Arthur Gibson.)

perature in your official business?

A. Once, in the evening at seven o'clock.

Q. And Mr. Gibson, is it also a fact that many times when you make an observation that in a few hours thereafter the temperature drops, or varies constantly?

A. Yes, but I keep a record of that. (Continuing:) I have two thermometers, one maximum and one minimum, the maximum shows the highest, the temperature has been during the preceding twenty-four hours, and the minimum shows the lowest. The temperature varies some throughout the Seward peninsula; around Nome, the tundra and the foothills it stays about the same, and I have tried that at both the Little Creek roadhouse and the Bessie roadhouse.

Q. Is it not a good deal colder out there a times than it is at Nome, only three miles away?

A. I have never adjusted the thermometer out there.

Q. Did you ever take any observations at the Bessie roadhouse or on the Grant claim?

A. At the Bessie when they were mining out there, and at the Little Creek roadhouse, but not over on the ground in controversy. [506]

**[Testimony of J. Allison Bruner, for Plaintiff
(Recalled in Rebuttal).]**

J. ALLISON BRUNER, recalled in rebuttal, as a witness for plaintiff.

Direct Examination by Mr. COCHRAN.

Q. Mr. Bruner, you are deputy clerk of this court-

A. I am.

(Testimony of J. Allison Bruner.)

Q. State whether or not a corporation known as the Corwin Trading Co. has ever filed any Articles of Incorporation in the office of the clerk of the District Court for the District of Alaska, or copies of Articles of Incorporation.

Mr. GILMORE.—Objected to, if the Court please, as wholly irrelevant and immaterial and incompetent for any purpose.

The COURT.—Objection overruled. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

A. I find no record of any such.

Q. Have they ever filed any designation of an agent upon whom service of process might be had?

Mr. GILMORE.—Objected to as immaterial, incompetent and irrelevant.

The COURT.—Objection overruled. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

A. I find no such files.

Q. Have they ever filed any corporate statement of any character with the clerk of the District Court of this division?

Mr. GILMORE.—Same objection, wholly irrelevant. [507]

The COURT.—Objection overruled. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

A. I find no such filing.

Q. Has the Pacific Coal & Transportation Co. ever filed any certified copy of its Articles of Incorpora-

(Testimony of J. Allison Bruner.)

tion with the clerk of this court?

Mr. GILMORE.—Objected to as irrelevant, immaterial and incompetent.

The COURT.—Objection overruled. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

A. It has.

Q. When did it first file its Articles of Incorporation?

Mr. GILMORE.—Objected to as immaterial and incompetent.

The COURT.—Objection overruled. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

A. February 8th, 1904.

Q. State whether or not they ever filed any corporate statement with the clerk of this court.

Mr. GILMORE.—Objected to as wholly immaterial, irrelevant and immaterial.

The COURT.—Objection overruled. To which ruling of the Court the defendants then and there excepted and the exception was allowed. [508]

A. The record shows a statement filed June 4, 1904, in the index.

Q. When did it first file an appointment or designation of resident agent upon whom service of process might be had?

Mr. GILMORE.—Objected to as wholly incompetent, and immaterial.

The COURT.—Objection overruled.

A. February 8, 1904.

(Testimony of J. Allison Bruner.)

Q. And who was the agent?

Mr. GILMORE.—Same objection.

The COURT.—Objection overruled. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

A. W. H. Bard.

Mr. COCHRAN.—I now offer in evidence the designation of agent, testified to as having been filed February 8, 1904, appointing W. H. Bard statutory agent and the consent of such agent.

Mr. GILMORE.—Objected to as wholly immaterial, incompetent and immaterial for any purpose.

The COURT.—Objection overruled. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

The COURT.—The said exhibits may be marked Plaintiff's Exhibits "N" and "O"; said exhibits being as follows: [509]

Plaintiff's Exhibit "N."

State of New Hampshire,
Hillsborough,—ss.

November 11th, 1903.

KNOW ALL MEN BY THESE PRESENTS,
That the Pacific Coal and Transportation Company,
a corporation duly established by law, having its
principal office or place of business in the City of
Portland, County of Cumberland and State of Maine,
District of America, and doing business in the city
(town) of Nome, District of Alaska, and having filed
in the office of the Secretary of the District of Alaska,
a duly authenticated copy of the charter of said cor-

poration in compliance with the Code of Alaska relative to foreign corporations, hereby appoints W. H. Bard of said Nome its lawful agent with full power and consent of said corporation to be sued and to accept service of process in the courts of the District of Alaska upon all causes of whatever nature and kind that may arise against said corporation.

[Corporate Seal]

PACIFIC COAL & TRANSPORTATION CO.,

By ALBERT MERRILL,

President.

By ALONZO ELLIOTT,

Secretary.

State of New Hampshire,
Hillsborough,—ss.

November 11th, 1903.

Personally appeared the above-named Albert Merrill and Alonzo Elliott, who being duly sworn did say that they are respectively the Vice-president and Secretary of the Pacific Coal & Transportation Company and that the seal hereunto affixed to this certificate is the corporate seal of the said corporation and that the said certificate was signed and sealed in behalf of said corporation and the said Albert Merrill and Alonzo Elliott severally acknowledged the above certificate to be the free act of said corporation.

Subscribed and sworn to before me,

[Notarial Seal] HARRY W. SPAULDING,

Notary Public.

HARRY W. SPAULDING.

State of New Hampshire,
Hillsborough,—ss.

I, John C. Bickford, Clerk of the Police Court of the City of Manchester, hereby certify that said Court is a Court of Record in and for said County and State and that Harry W. Sapulding, whose name is written on the margin hereof is a Notary Public for said State, duly commissioned and sworn according to law and all his official acts as such are entitled to full faith and credit, and I know that his signature thereon written is genuine.

In witness whereof I have hereunto set my hand [510] and affix the seal of said Court this 11th day of November, 1903.

[Court Seal] JOHN C. BICKFORD,
Clerk of Police Court, City of Manchester.

Plaintiff's Exhibit "O."

United States of America,
District of Alaska.

To the Clerk of the United States District Court in
and for the District of Alaska, Second Division,

This is to certify that in accordance with Sec. 226, Chapter XXIII of the Civil Code for the District of Alaska, I do hereby consent to act as agent for the Pacific Coal and Transportation Company, a corporation, incorporated under the laws of the State of Maine, in accordance, under and by virtue of my appointment by the authorized officers of said corporation on the 11th day of November, A. D. 1903.

W. H. BARD.

Dated at Nome, District of Alaska, this 6th day of February, 1904.

Q. State whether or not the Pacific Coal & Transportation Co. subsequent to the 8th day of February, 1904, appointed any other or different resident agent upon whom process might be had.

Mr. GILMORE.—Objected to as wholly irrelevant and immaterial.

The COURT.—Objection overruled. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

A. They did.

Mr. COCHRAN.—I offer the appointment of and consent of agent of Pacific Coal & Transportation Co., filed in the clerk's office Feb. 18, 1907.

Mr. GILMORE.—Objected to as wholly irrelevant and incompetent. [511]

The COURT.—Objection overruled. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

The COURT.—Said exhibit may be marked Defendants' Exhibit "P"; said exhibit being as follows:

Plaintiff's Exhibit "P."

KNOW ALL MEN BY THESE PRESENTS:
That the PACIFIC COAL AND TRANSPORTATION COMPANY, a corporation duly organized and existing under *tha* by virtue of the laws of the State of *Ma* Maine, having its principal or registered office in the city of Portland, in the State of Maine;

and also having a business office in the city of Manchester, in the State of New Hampshire and also having a business office in the city of Nome, in the District of Alaska, hereby consents to be sued in the courts of the District of Alaska, upon all causes of action arising against it in said District, and hereby designates and appoints JOHN T. REED, residing in the City of Nome, in the District of Alaska, as its Agent for said District of Alaska, upon whom service of summons and all other legal process may be had and made in all actions or proceedings against said corporation, in any of the courts of said District of Alaska, according to the statutes in such case made and provided.

The said corporation hereby designates the city of Nome, in the District of Alaska, as its principal place of business within the said District.

IN WITNESS WHEREOF, the said PACIFIC COAL AND TRANSPORTATION COMPANY, a corporation, has, by its President, thereunto duly authorized, caused these presents to be signed, and sealed with its corporate seal, at the city of Manchester, in the State of New Hampshire, on this 28th day of November, 1906.

PACIFIC COAL AND TRANSPORTA-
TION COMPANY,

By ALBERT MERRILL,

President.

Attest: ALONZO ELLIOTT,

Secretary. [512]

State of New Hampshire,
County of Hillsborough,—ss.

I, WILLIAM G. BERRY, a Notary Public in and for the County and State aforesaid, do hereby certify, that on the day in this certificate last mentioned, Albert Merrill and Alonzo Elliott, personally appeared before me in said County, and each being by me duly sworn, did severally depose and say: That he, the said Albert Merrill is the President of the Corporation described in the above and foregoing instrument, and that he, the said Alonzo Elliott, is the Secretary of the said Corporation therein described; and that they as such officers, respectively, were duly authorized by said corporation, to execute and acknowledge the above and foregoing instrument; and that the seal affixed to said instrument is the corporate seal of said Corporation; and that said instrument was signed, sealed and executed by them respectively, on behalf of said corporation, as its act and deed, and for the uses and purposes therein expressed, and they severally acknowledge said instrument to be the act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my notarial seal, this 28th day of November, 1906.

[Notarial Seal] WILLIAM G. BERRY,
Notary Public in and for the State of New Hampshire, Residing at Manchester.

I, JOHN T. REED, residing in the city of Nome, in the District of Alaska, having been designated and appointed by the PACIFIC COAL AND

TRANSPORTATION COMPANY, a corporation duly organized and existing under and by virtue of the laws of the State of Maine, as the person residing in the District of Alaska upon whom service of summons and all other legal process may be had and made in all actions or proceedings against said corporation, in any of the courts of the said District of Alaska, according to the statutes in such case made and provided, do hereby consent to said designation and appointment, and hereby accept the same.

IN WITNESS WHEREOF, I have hereunto set my hand this 18th day of February, 1907.

JOHN T. REED.

United States of America,
District of Alaska,
Second Division,—ss.

On this 18th day of February, 1907, before me, the undersigned, a Notary Public in and for the District of Alaska, appeared the within-named JOHN T. REED, to me known to be the identical person named in and who signed the foregoing designation and appointment, and acknowledged to me that he signed the same for the purposes therein expressed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my notarial seal, the day and year in this certificate first above written.

[Notarial Seal] C. S. HANNUM,
Notary Public in and for the District of Alaska, Residing at Nome. [513]

Q. Were there any other appointments of agents?

(Testimony of J. Allison Bruner.)

Mr. GILMORE.—Objected as immaterial and incompetent.

The COURT.—Objection overruled. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

A. That was the last one. There were no other statements.

Mr. COCHRAN.—I offer in evidence certified copies of Articles of Incorporation of the Pacific Coal & Transportation Co., filed in the office of the clerk of this court on June 4, 1904.

Mr. GILMORE.—Objected to as wholly irrelevant and immaterial.

The COURT.—Objection overruled. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

The COURT.—The exhibit may be marked Plaintiffs' Exhibit "Q"; which said exhibit is as follows:

Plaintiff's Exhibit "Q."

To the Hon. Byron Boyd,
Secretary of State,
Augusta, Maine.

I hereby certify that at a meeting of the stockholders of the Pacific Coal and Transportation Company, properly called for that purpose, and held at its office, 185 Middle St., Portland, Maine, on the eighth day of August, 1901, it was voted by unanimous vote of all the stock present and represented at the meeting, being all the stock issued and outstanding, That the par value of the shares of stock be changed from one hundred dollars, to twenty-five

dollars per share, making the number of shares forty thousand instead of ten thousand shares, the total amount of the capital stock remaining the same.
[514]

That the Clerk be authorized to file the proper certificate of such change with the Secretary of State.

P. J. LARRABEE,

Clerk.

Maine,

Cumberland,—ss.

August 8, 1901.

Personally appeared P. J. Larrabee, clerk of said corporation and made oath that the above certificate by him signed is true.

M. P. FRANK,

Justice of the Peace.

State of Maine.

Office of Secretary of State.

Augusta, Aug. 9, 1901.

Received and filed this day.

Attest: S. J. CHADBOURNE,

Deputy Secretary of State.

Recorded Vol. 2, Page 245.

STATE OF MAINE.

CERTIFICATE OF ORGANIZATION OF A
CORPORATION UNDER THE GENERAL
LAW.

The undersigned, officers of a corporation organized at Portland, Maine at a meeting of the signers of the articles of agreement therefor, duly called and held at the office of Frank and Larrabee in the City of Portland, Friday, the twenty-sixth day of July, A. D. 1901, hereby certify as follows:

The purposes of said corporation are to purchase, take on lease, or otherwise acquire any mines, mining rights and land in Alaska or elsewhere, and any interest therein, and to explore, work, develop, and turn to account the same; to quarry, mine, dress, and prepare for market coal and mineral substances of all kinds, and to carry on any other operations which may seem conducive to any of the Company's objects; to buy, sell, and deal in coal and coal plants, machinery, implements, and provisions and things capable of being used in connection with mining operations, or required by workmen and others employed by the Company; to construct, maintain, improve, manage, work, control and superintend any roads, ways, bridges, reservoirs, water courses, aqueducts, wharves, mills, hydraulic work, works, factories, warehouses and means for the transportation of its products and other freight connected with its business, and for the purposes thereof, and other works and conveniences incidental thereto which may seem directly or indirectly conducive to any of the objects of the Company, and to contribute to, subsidize, or otherwise aid or take part in any such operations; to hold, purchase, or otherwise acquire, to sell, assign, transfer, mortgage, pledge or otherwise dispose of shares of the capital stock and bonds, debentures, or other evidences of indebtedness [515] created by other corporation or corporations, and while the holder thereof, to exercise all the rights and privileges of ownership, including the right to vote thereon; to construct, hire, purchase and operate steamships and other vessels of any class, and to es-

tablish and maintain lines or regular service of steamships or other vessels, and generally to carry on the business of shipowners, and to enter into contracts for the carriage of mails, passengers, goods and merchandise by any means, either by its own vessels and conveyances or by or over the vessels and conveyances of others; to construct, purchase, take on lease, or otherwise acquire and work any wharf, pier, dock, buildings or works or means or methods of conveyances capable of being advantageously used in connections with and for the purpose of such business; and in connection with any of the objects hereinbefore mentioned, to acquire concessions or licenses for the establishment and working of lines of steamships or sailing vessels between any ports of the world, or for the formation or working of any wharf, pier, dock, or other works, or for the means of any conveyances for the purposes of its business; to conduct its business and have one or more offices, and unlimitedly and without restriction to hold, purchase, lease, mortgage and convey real and personal property in or out of this state and to conduct its business in any state or territory or colonial possession or territorial acquisition of the United States, and in any foreign country or place, but subject always to the laws thereof, to borrow money, to make and issue promissory notes, bills or exchange, bonds, debentures, and evidences of indebtedness of all kinds, whether secured by mortgage, pledge or otherwise, and to secure the same by mortgage, pledge or otherwise; to do any or all of the things in this certificate set forth as objects, purposes, powers or

otherwise, to the same extent, and as fully as natural persons might or could do, and in any part of the world, as principals, agents, contractors, trustees or otherwise, with all the powers now or hereafter conferred by the laws of Maine upon corporations under the provisions of Chapter forty-eight of the Revised Statutes of said State and the acts and laws amendatory and additional thereto, but not contravening the same.

This corporation shall not have the right within the State of Maine to do the following kinds of business, to wit: to construct or operate any railroad, telegraph or telephone lines nor aid in the construction thereof, nor to make, generate, sell, distribute or supply gas or electricity for lighting, heating, manufacturing or mechanical purposes or either of them.

The amount of capital stock is One million dollars.

The amount of capital stock already paid in is Four hundred dollars.

The par value of the shares is One Hundred dollars.

The names and residences of the owners of said shares are as follows:

Name.	Residences.	No. of Shares.	
		Common.	Preferred.
A. W. Mansur	Boston, Mass.	One	
P. J. Larrabee	Portland, Maine	One	is
Henry C. Houston	“ “	One	
F. W. Huestis	Boston, Mass.	One	

The balance of the stock nine thousand nine hundred and ninety-six shares remain in the Treasury unissued and the property of the Company. [516]

Said corporation is located at Portland in the

County of Cumberland, Maine.

The number of directors is three and their names are A. W. Mansur, F. W. Hustis and Henry C. Houston.

The name of the clerk is P. F. Larrabee and his residence is Portland, Maine.

The undersigned, A. W. Mansur is president; the undersigned, F. W. Huestis is treasurer; and the undersigned, A. W. Mansur, F. W. Huestis and Henry C. Houston are in a majority of the directors of said corporation.

Witness our hands this twenty-sixth day of July, A. D. 1901.

A. W. MANSUR, President.
F. W. HUESTIS, Treasurer.
A. W. MANSUR,
F. W. HUESTIS,
HENRY C. HOUSTON,
Directors.

Maine,
Cumberland,—ss.

Aug. 1, 1901.

Personally appeared Henry C. Houston and made oath to the foregoing certificate that the same is true.

P. J. LARRABEE,
Justice of the Peace.

Massachusetts,
Suffolk,—ss.

Boston, July 31, A. D. 1901.

Then personally appeared A. W. Mansur, President and Director, F. W. Huestis, Director and

Treasurer, and severally made oath to the foregoing certificate, that the same is true.

[L. S.]

Before me,

LEONARD G. ROBERTS,

Notary Public.

STATE OF MAINE.

Attorney General's Office, August 1st, A. D. 1901.

I hereby certify that I have examined the foregoing certificate, and the same is properly drawn and signed, and is conformable to the constitution and laws of the State.

GEO. M. SEIDERS,

Attorney General.

COPY.

(Name of Corporation.)

Pacific Coal and Transportation Company.

Cumberland,—ss.

Registry of Deeds.

Received August 1, 1901, at 12 h. 6 m. P. M.

Recorded in Vol. 21, page 487.

Attest: NORMAN TRUE, Register.

A true copy of record.

Attest: NORMAN TRUE, Register.

STATE OF MAINE.

Office of Secretary of State,

Augusta, Aug. 2, 1901.

Received and filed this day.

Attest: S. J. CHADBOURNE,

Deputy Secretary of State.

Recorded in Vol. 34, page 217. [517]

STATE OF MAINE.

OFFICE OF SECRETARY OF STATE.

I hereby certify that the foregoing is a true copy from the records of this office.

IN TESTIMONY WHEREOF, I have caused the seal of the State to be hereunto affixed.

GIVEN under my hand at Augusta, this fourth day of January in the year of our Lord one thousand nine hundred and four and in the one hundred and twenty-eighth year of the Independence of the United States of America.

[Seal of State]

BYRON BOND,
Secretary of State.

Mr. COCHRAN.—I offer the corporate statement filed on June 20th, 1905.

Mr. GILMORE.—Objected to as wholly immaterial, and incompetent.

The COURT.—Objection overruled. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

The COURT.—The exhibit may be marked Plaintiff's Exhibit "R"; said exhibit "R" being as follows:

Plaintiff's Exhibit "R."

STATEMENT OF THE PACIFIC COAL & TRANSPORTATION COMPANY.

In compliance with the requirements of the Code of Alaska relative to foreign corporations doing business within the District of Alaska, the Pacific Coal & Transportation Company hereby submits the following statement in regard to its financial standing to be filed in the office of the Secretary of the Dis-

trict of Alaska together with a copy of its Charter, and also to be filed in the office of the Clerk of the District in which said corporation may be doing business. [518]

1. NAME OF CORPORATION.

The "Pacific Coal & Transportation Company" organized under the laws of the State of Maine and having its principal office in the City of Portland, County of Cumberland, in said state of Maine and having its principal office within the District of Alaska in the city (town) of Nome.

2. CAPITAL STOCK.

The amount of capital stock is \$200,000.

3. CAPITAL STOCK PAID IN IN MONEY.

The amount of capital stock paid in in money is not shown by the books or records of said coporation.

4. CAPITAL STOCK NOT PAID IN IN MONEY.

The amount of capital stock not paid in in money consisting of lands and the buildings thereon, machinery, tools, etc., in the District of Alaska and a Steamship plying between Nome, Alaska and Seattle, State of Washington to the value of, \$200,000.

5. The assets are made up as follows, to wit, property, real, personal and mixed, including: Eleven Lots or parcels of land situated in the District of Alaska near the Arctic Ocean, one lot or parcel of land with the buildings thereon situated in or near the Town of Teller, fourteen placer mining and quartz claims, more or less, situated in the Cape Nome District, one-half of the "Ingersoll Claim" so-called, situated on Anvil Creek near Nome City, two

or more parcels of land with the buildings thereon situated in the Town of Nome, the Steamship "Corwin" so-called, together with masts, bow, sprit, *slais*, boats, anchors, cable, tackle, furniture and all other necessities appertaining and belonging to said vessel, and all the stores, stock, merchandise, tools, machinery, etc., now in use in the District of Alaska to the value of \$700,000

The cash value of the above enumerated property is not shown by the books of record of this corporation.

6. LIABILITIES.

Capital Stock, \$200,000

Twenty year interest bearing bonds issued September 2nd, 1901 and payable at the office of the American Loan & Trust Company in the City of Boston, Commonwealth of Massachusetts, \$500,000

This bond issue is secured by first mortgage of property to said American Loan & Trust Company as Trustee.

ALBERT MERRILL, President.

A. ELLIOTT, Secretary. [519]

State of New Hampshire,
Hillsborough,—ss.

On this 25th day of May, 1905, before me appeared Albert Merrill and Alonzo Elliott to me personally known, who being by me duly sworn did say, that they are respectively the Vice-president and Secretary of the Pacific Coal & Transportation Company, a corporation, duly established by law, and made oath that in their behalf the above statements by them subscribed, are true, according to the records of said

corporation as kept by the Secretary in a book for that purpose, and that the seal hereunto affixed to this instrument, is the corporate seal of the said corporation.

Attest:

ALBERT MERRILL,
A. ELLIOTT,
W. G. AFRIED,
C. F. FLANDERS,

Directors of the Pacific Coal & Transportation Company.

[Corporate Seal]

Before me

WILLIAM G. BERRY, [Seal]

Notary Public. [520]

[Testimony of Louis Stevenson, for Plaintiff.]

LOUIS STEVENSON, recalled, witness on behalf of plaintiff, testified as follows:

Direct Examination by Mr. COCHRAN.

Q. You heard the testimony of Mr. McCumber, yesterday, in relation to conversation had with you prior to the 1st day of November, 1910, wherein he stated that you said to him: "I see you have begun to work on the Grant Claim," or words in substance to that effect,—did you hear that testimony?

A. I did.

Q. Did you ever have that conversation wherein you stated to him anything like that? A. No.

Q. What was the conversation?

A. I went to McCumber. I heard that he was going to go to work out there and I went to McCumber

(Testimony of Louis Stevenson.)

and asked him if he intended to go out there and freeze the ground and work it that way, and he offered to show me some books they had regarding the subject and I told him I didn't believe he could work it that way, and then I stated to him that we had the older title and I would try to stop him if he went to work, as we had the older title.

Q. Is that the substance of the conversation?

A. That is part of the conversation.

Mr. COCHRAN.—We rest.

Mr. GILMORE.—No sur-rebuttal. [521]

BE IT FURTHER REMEMBERED that the said cause was thereupon argued to the Court by counsel for the plaintiff and counsel for the defendants, and duly submitted on the 27th day of November, 1911, and thereafter on the 5th day of February, 1912, the Court rendered its opinion, finding for the plaintiff and against the defendants, and directed plaintiff to prepare findings of fact and conclusions of law and a decree.

AND BE IT FURTHER REMEMBERED, that thereafter, on the —— day of March, 1912, the plaintiff prepared, served and filed the following findings of fact and conclusions of law: [522]

*In the District Court for the District of Alaska,
Second Division.*

No. —.

PIONEER MINING COMPANY, a Corporation,
Plaintiff,

vs.

THE PACIFIC COAL & TRANSPORTATION
COMPANY, a Corporation, M. D. Mc-
CUMBER, JOHN DOE AND RICHARD.
Defendants.

Findings of Fact and Conclusions of Law.

This cause coming on regularly to be heard before the Court without a jury, on the 13th day of November, 1911, and the trial thereof continuing from day to day, except Sundays, to November 27th, 1911; the plaintiff appearing by G. J. Lomen, O. D. Cochran and Geo. D. Schofield, its attorneys, and the defendant The Pacific Coal & Transportation Company appearing by its attorney Elwood Bruner, and the defendant M. D. McCumber appearing in person and by William A. Gilmore his attorney; witnesses on behalf of the plaintiff and the defendants having been sworn and testified, and documentary evidence and depositions on behalf of the parties hereto being read and introduced in evidence; and the Court having heard the argument of counsel for the respective parties and having heretofore rendered and filed its written opinion herein, and being now fully advised in the premises, makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT.

I.

That the plaintiff, Pioneer Mining Company, is now and during all of the times mentioned in plaintiff's complaint, [523] was a corporation duly organized, created and existing under the laws of the State of Washington, and doing business in the District of Alaska.

II.

That the defendant, The Pacific Coal & Transportation Company, is, and was, during all the times mentioned, in plaintiff's complaint, a corporation duly organized, created and existing under the laws of the State of Maine, and doing business in the District of Alaska.

III.

That the defendants, John Doe and Richard Roe, are fictitious names of persons upon whom no service of summons was made in the above-entitled action.

IV.

That the ground and premises described in plaintiff's complaint as Placer Mining Claim known as Bench Claim No. 1 on Moonlight Creek near Moonlight Springs, situated in the Cape Nome Mining and Recording District, District of Alaska, was, prior to the 3d day of January, 1899, vacant, unappropriated and unoccupied mineral land belonging to the Government of the United States, and that on said 3d day of January, 1899, said ground and premises were appropriated and located as a Placer Mining Claim, by one Andrew Jensen, under the mineral land laws of the United States; that said

Andrew Jensen on said date, marked the said mining claim by substantial stakes so that its boundaries could be readily traced upon the ground, and did, upon said 3d day of January, 1899, or prior thereto, make a discovery of gold within the exterior boundaries of the mining claim so marked by him, and did thereafter and on the 17th day of January, 1899, cause a notice of location of such claim to be [524] duly recorded in the Records of said Mining District, and performed each and every act required by law, necessary to a valid mineral location.

V.

That on the 16th day of September, 1903, the plaintiff, Pioneer Mining Company, by and through mesne conveyances from the said Andrew Jensen, became, now is, and ever since said date has been the owner of said placer mining claim known as Bench claim No. 1 on Moonlight Creek near Moonlight Springs in the said mining district, and which said claim is more particularly described by metes and bounds as follows:

“Commencing at stake No. 1 or the southwest corner which is identical with the southwest corner of Robert Lyng’s Moonlight Claim and the northeast corner of Placer Claim No. 2 on Moonlight Creek; thence S. 60° 12’ E. 714.5 feet to stake No. 2 or the SE. corner which is identical with the SW. corner of the Carlson location; thence N. 40° 01’ E. 986.8 feet to stake No. 3 or the NE. corner which is identical with the NW. corner of the Carlson Location; thence

N.60° 12' W. 600 feet to stake No. 4 or the NW. corner; thence S. 47° 51' W. 1021.3 feet to stake No. 1 or place of beginning.

All bearings refer to the true Meridian, Magnetic variation 19° 30' E."

VI.

That the plaintiff, Pioneer Mining Company, was, on the 7th day of November, 1910, the date of the commencement of this action, and for a long time prior thereto had been, in the actual occupancy and exclusive possession of the whole of said mining claim, and that the defendants were not, nor were either of them, in possession of any portion of said mining claim on the said 7th day of November, 1910, nor had they or either of them been in the occupation or possession of any part of said mining claim for a long time prior thereto.

VII.

That on the 9th day of January, 1899, and subsequent [525] to said location made by said Andrew Jensen, one W. N. Grant located the so-called Grant claim, claimed by defendants, immediately north of and adjoining the said Bench claim No. 1 on Moonlight Creek; that said claim as originally located by said Andrew Jensen and said W. N. Grant, did not conflict with or overlap each other, that at some time subsequent to the said location made by the said Jensen and the said Grant, but when and by whom does not appear, the markings of the said Grant claim were so changed that the said Grant claim as then marked upon the ground overlapped a part of the said Bench claim No. 1 on

Moonlight Creek at the northern end thereof, said overlap being the ground in controversy in this action.

VIII.

That the plaintiff, Pioneer Mining Company and its predecessors in interest, have, ever since the 3d day of January, 1899, been in the peaceful possession of said Bench claim No. 1 on Moonlight Creek as above described, and from time to time and during each year since said date did, they have actually occupied said premises and used and claimed the same as and for a placer claim, and except as hereinafter mentioned, the whole thereof.

That the defendant, The Pacific Coal and Transportation Company, and its lessees, with full knowledge of the rights of the plaintiff, and with full knowledge of the location and boundaries of said Bench No. 1 on Moonlight, have from time to time entered upon and prospected the ground embraced within the overlap above mentioned, but that said several entries and acts of said Pacific Coal & Transportation Company and its lessees were wholly acts of trespass and not continued for more than a few months at any one time, and that such occupancy [526] or possession was neither uninterrupted or exclusive for the period of seven years.

IX.

That the defendant, The Pacific Coal & Transportation Company, is not now, nor has it been at any time, the owner in fee nor at all, of any part of the mining claim or premises described in plaintiff's complaint, by virtue of any location made by one

W. N. Grant on the 9th day of January, 1899, or otherwise.

X.

That the defendant, The Pacific Coal & Transportation Company, its grantors or predecessors in interest, or the lessee, have not nor has either of them ever since the 9th day of January, 1899, been in the uninterrupted, sole, exclusive or notorious possession of any portion of the said placer mining claim Bench No. 1 on Moonlight Creek, and that all entries made upon any portion of the said Bench claim No. 1 on Moonlight Creek by the said defendant, The Pacific Coal & Transportation Company, its predecessors in interest, its lessees, agents or representatives, were entries made without any right whatever and that such entries were acts of trespass.

XI.

That the defendant, The Pacific Coal & Transportation Company, was not, on the 15th day of August, 1908, in the sole, quiet, exclusive, uninterrupted or notorious possession of any portion of the said placer mining claim No. 1 Bench on Moonlight Creek, hereinbefore specifically described, nor has its lessee, the defendant, M. D. McCumber, since the said date been in the exclusive possession of any portion thereof. [527]

XII.

That the defendant, The Pacific Coal & Transportation Company, or its grantors, predecessors in interest and lessees have not nor has any other person in its or their behalf, since the 9th day of January, 1899, been in the uninterrupted, adverse, notorious

or exclusive possession under color or claim of title of any portion of the said placer mining claim No. 1 Bench on Moonlight Creek, specifically hereinbefore described.

XIII.

That the defendant, M. D. McCumber, was not on the 7th day of November, 1910, the date upon which this action was instituted, or for a long time prior thereto, in the open, notorious or exclusive possession of the ground and premises herein in dispute, or any portion of the said placer mining claim No. 1 Bench on Moonlight Creek, nor has he since been in such possession, nor was the said defendant M. D. McCumber on said date, or for a long time prior thereto, engaged in mining thereon or in prospecting thereon, nor had he any mining equipment thereon except a small unoccupied cabin of little value.

XIV.

That it is not true that the defendant, M. D. McCumber, and his lessor, The Pacific Coal & Transportation Company, its predecessors and grantors, have been engaged for seven years in operating, mining or developing any portion of the said placer mining claim Bench No. 1 on Moonlight Creek, or the ground and premises in conflict in this action, with knowledge or notice on the part of the plaintiff or without any objection, interruption, or complaint, or that the defendant, The Pacific Coal & Transportation Company or its lessees have expended [528] large sums of money, in mining prospecting or developing the same without objection or complaint from or on behalf of said

plaintiff, since the 9th day of January, 1899, or at all.

XV.

That it is not true that the defendant, The Pacific Coal & Transportation Company, its grantors or predecessors in interest, or its lessee, the defendant M. D. McCumber, were in the actual, open, exclusive, notorious, uninterrupted or adverse possession of any portion of said mining claim No. 1 Bench on Moonlight Creek, on the 7th day of November, 1910, the date when the plaintiff commenced the above-entitled action, or for ten years prior thereto or at all.

XVI.

That the plaintiff, Pioneer Mining Company, has, ever since the year 1903, been in the possession of the ground and premises involved in this action, and have, ever since said time, maintained ditches, pen-stocks, and pipe-lines upon the same, of the value of several thousands of dollars, and have, each year since said date, expended upon said pipe-lines, pen-stocks and ditches situated upon the said ground and premises involved in this action, to exceed the sum of eight hundred dollars, and have, for several years past, been actively engaged in mining upon the lower portion of the said placer mining claim No. 1 Bench on Moonlight.

XVII.

That the defendants, The Pacific Coal & Transportation Company, its grantors and predecessors in interest, and the defendant, M. D. McCumber, have not nor has either of them at any time had the

uninterrupted, adverse or notorious possession, under color or claim of title, of the ground or premises [529] involved in this action, for the period of seven years, or at all.

XVIII.

That the allegations contained in the plaintiff's complaint and replies to the separate answers of the defendants, The Pacific Coal & Transportation Company, and M. D. McCumber are true.

CONCLUSIONS OF LAW.

And as Conclusions of Law from the foregoing facts the Court now finds and decides:

I.

That the plaintiff Pioneer Mining Company is the owner and entitled to the possession of the whole of the placer mining claim as described in its complaint and known as "Bench Claim No. 1" on Moonlight Creek as definitely described in the foregoing Findings of Fact as against the defendants and each of them, and all persons claiming or to claim the same or any part thereof under them, the said defendants or either of them and that said defendants have not, nor have either of them any right, title or interest in or to said mining claim or any part thereof.

II.

That the plaintiff is entitled to a decree as prayed for in its complaint to quiet its title to said mining claim and the whole thereof against said defendants, The Pacific Coal & Transportation Company and M. D. McCumber, and each of them, and all persons claiming or to claim the same or any part thereof

under or through the said defendants or either of them.

III.

That the plaintiff is further entitled to a decree [530] perpetually enjoining said defendants and each of them from ever asserting any claim, right, title or interest in or to said mining claim or any part thereof, adverse to the plaintiff.

IV.

That this action should be dismissed as to the fictitious defendants John Doe and Richard Roe upon whom no service of summons was made.

V.

That the plaintiff is entitled to a judgment for its costs and disbursements to be taxed herein, against the said defendants, The Pacific Coal & Transportation Company and M. D. McCumber.

LET JUDGMENT AND DECREE be entered accordingly.

Done in open court this 13th day of April, 1912.

CORNELIUS D. MURANE,

District Judge. [531]

AND BE IT FURTHER REMEMBERED, that thereupon, within the time allowed by law, the defendants made, served and filed their objections and exceptions to plaintiff's said proposed findings of fact and conclusions of law, as follows: [532]

*In the District Court for the District of Alaska,
Second Division.*

No. 2245.

PIONEER MINING COMPANY, a Corporation,
Plaintiff,

vs.

THE PACIFIC COAL & TRANSPORTATION
COMPANY, a Corporation, M. D. McCUM-
BER, JOHN DOE and RICHARD ROE,
Defendants.

**Objections and Exceptions to Plaintiff's Proposed
Findings of Fact and Conclusions of Law.**

Come now, defendants, Pacific Coal & Transportation Company, a corporation and M. D. McCumber, and make the following exceptions and objections to the proposed findings of fact and conclusions of law proposed by the plaintiff.

I.

They object to finding of fact number IV upon the ground and for the reason that the said finding is contrary to and against the preponderance of evidence.

II.

They object to the proposed finding of fact number V upon the ground and for the reason that the said proposed finding is contrary to and against the preponderance of evidence.

III.

They object to proposed finding of fact number VI upon the ground and for the reason that said pro-

posed finding of fact is contrary to and against the preponderance of evidence and that said proposed finding was not supported by any evidence at trial.
[533]

IV.

They object to proposed finding of fact number VII upon the ground and for the reason that the same is contrary to and against the preponderance of evidence, and upon the further ground that the same was not supported by any evidence at the trial.

V.

They object to proposed finding of fact number VIII upon the ground and for the reason that the same is contrary to and against the preponderance of evidence received at trial, and that the same was not supported by any evidence at the trial.

VI.

They object to proposed finding of fact number IX upon the ground and for the reason that the same is contrary to and against the preponderance of the evidence offered at the trial.

VII.

They object to the proposed finding of fact number X upon the ground and for the reason that the same is contrary to and against the preponderance of the evidence offered at the trial.

VIII.

They object to proposed finding of fact number XI upon the ground and for the reason that the same is contrary to and against the preponderance of the evidence received at the trial.

IX.

They object to the proposed finding of fact number

XII upon the ground and for the reason that the same is contrary [534] to and against the preponderance of evidence received at the trial.

X.

They object to proposed finding of fact number XIII upon the ground and for the reason that the same is contrary to and against the preponderance of evidence received at the trial.

XI.

They object to proposed finding of fact number XIV upon the ground and for the reason that the same is contrary to and against the preponderance of evidence received at the trial.

XII.

They object to proposed finding of fact number XV upon the ground and for the reason that the same is contrary to and against the preponderance of evidence received at the trial; and they further object to said finding because by the overwhelming weight of the evidence offered at the trial, the contrary appears to be true.

XIII.

They object to proposed finding of fact number XIV upon the ground and for the reason that the same is contrary to and against the preponderance of evidence received at the trial.

XIV.

They object to proposed finding of fact number XVII upon the ground and for the reason that the same is contrary to and against the preponderance of evidence offered and received at the trial.

XV.

They object to proposed finding of fact number XVIII upon the ground and for the reason that the same is contrary to [535] and against the preponderance of evidence offered and received at the trial.

XVI.

They object to proposed conclusions of law numbers 1, 2, 3, 4 and 5, upon the ground and for the reason that the same are not supported by the evidence offered and received at the trial and contrary to law.

Dated at Nome, Alaska, this 28th day of March, A. D. 1912.

ELWOOD BRUNER,

Attorney for Pacific Coal & Trans. Co.

WILLIAM A. GILMORE,

Attorney for M. D. McCumber. [536]

AND BE IT FURTHER REMEMBERED that at the same time, and within the time allowed by law, the defendants made, served, filed and tendered to the Court their request for the Court to make, sign and file the following findings of fact and conclusions of law: [537]

*In the District Court for the District of Alaska,
Second Division.*

No. 2245.

PIONEER MINING COMPANY, a Corporation,
Plaintiff,

vs.

THE PACIFIC COAL & TRANSPORTATION
COMPANY, a Corporation, M. D. McCUM-
BER, JOHN DOE and RICHARD ROE,
Defendants.

**Defendants' Proposed Findings of Fact and
Conclusions of Law.**

Come now defendants, Pacific Coal & Transportation Company, a corporation and M. D. McCumber, and request the Court to find that from the pleadings and all the evidence in the case the Court is without jurisdiction to try and determine the issue of fact raised in said cause, and that said action be dismissed.

If the Court refuses to make and sign the foregoing finding of fact, then the defendants request the Court to make and sign the following

FINDINGS OF FACT.

I.

That the defendant, Pacific Coal & Transportation Company, is now and was at the time of the commencement of this suit, and for a long time prior thereto, the owner in fee subject only to the paramount title of the United States, of the land and premises described and known as Bench claim No. 1 at the base of Anvil Mountain, and also called Moon-

light or Grant Claim, under and by virtue of a valid location thereof at a [538] placer mining claim, made by one W. N. Grant on the 9th day of January, 1899; that on said 9th day of January, 1899, the lands and premises embraced within said location as hereinafter described, were vacant, unoccupied and unappropriated mineral lands belonging to the Government of the United States, and on said 9th day of January, 1899, the said W. N. Grant entered thereon and located the same for a placer mining claim, under the mineral land laws of the United States, and then and there performed each and every act thereon required by law to perfect and make a valid placer mining location of Government placer mineral land; that the said claim as located by him was named and called No. 1 Bench, and subsequently named and called "Moonlight" or "Grant" Claim, and contained at the time of the original location thereof by the said Grant, an area approximately of twenty (20) acres, and was and is described by metes and bounds as follows:

Commencing at the initial stake which is situated near the east center end of what is known as the Robert Lyng placer claim near Moonlight Springs, in the Cape Nome Mining and Recording District, District of Alaska, running thence S. $9^{\circ} 41'$ W. 312.4 feet to stake No. 1; thence N. $79^{\circ} 59'$ E. 1268.5 ft. to stake No. 2; thence N. $00^{\circ} 11'$ E. 650 ft. to stake No. 3; thence S. $79^{\circ} 58'$ W. 1280.7 ft. to stake No. 4; thence S. $10^{\circ} 00'$ E. 393 ft. to the initial stake or place of beginning.

II.

That subsequent to the said 9th day of January,

1899, and after the location of said land as mineral land as above described, and while the same was a valid and subsisting placer location, by mesne conveyances from the said W. N. Grant and his grantees, the defendant Pacific Coal & Transportation Company became the owner in fee, subject only to the paramount title of the United States, of the whole of said claim and entered into exclusive, open and notorious possession of the whole of said claim, under and by virtue of the title acquired [539] by and from the said W. N. Grant, and ever since the said 9th day of January, 1899, the said defendant, Pacific Coal & Transportation Company, its grantors and predecessors in interest and lessees, have been in the uninterrupted, sole, exclusive, open and notorious possession of the whole of said placer mine.

III.

That thereafter and on the 15th day of August, A. D. 1908, the defendant, Pacific Coal & Transportation Company, by a written, lease, let and demised the whole of said placer claim to the defendant, M. D. McCumber, who thereupon immediately entered into the *exclusive of the whole* of said claim and commenced to mine and prospect the same for gold, under the terms of his lease; and thereafter, on the 1st day of May, 1909, the said lease was extended in writing, and thereafter on the 28th day of April, 1911, the terms of said lease were again extended in writing; that ever since the said 15th day of August, 1908, the defendant, M. D. McCumber, has been in the exclusive possession of said mining claim under and by virtue of his said lease and extensions.

IV.

That the alleged placer mining claim described in paragraph IV of plaintiff's complaint and called by plaintiff Bench Claim No. 1 Moonlight claim, covers and embraces an overlap of a large portion of the westerly end of the Grant claim above described, but that said plaintiff has no right, title, interest or estate in or to the said part or portion so claimed of said Grant claim, but wrongfully and unlawfully, without right, asserts title and ownership thereto; that the plaintiff has no [540] right, title, interest, ownership or title of, in or to any of the lands or premises embraced within the said Grant claim, as above described by metes and bounds; and the plaintiff has not now, and never has had, and did not have at the commencement of this action the possession or right of possession in or to any part or portion of said Grant claim as above described.

V.

That ever since the 9th day of January, 1899, the defendant, Pacific Coal & Transportation Company, its predecessors in interest and its lessees, have been in the uninterrupted, adverse, open, notorious and exclusive possession of the whole of said Grant claim and particularly the portion known as the ground in controversy in this action, and claim the same under color and claim of title by reason of the said Grant location made as above stated, on the 9th day of January, 1899.

VI.

That on the 7th day of November, 1910, and the date upon which the plaintiff instituted this suit, and

for a long time prior thereto, and ever since, the defendant, McCumber, by virtue of his written lease and its written extensions, from the defendant, Pacific Coal & Transportation Company was in the actual, physical, open, notorious and exclusive possession of the whole of the Grant placer claim, and particularly that portion described as the ground in controversy in this action, and the plaintiff was not in possession of any part or portion of said Grant claim, or the ground in controversy, at the time it commenced the said action. [541]

VII.

That on the 7th day of November, 1910, the date upon which the plaintiff instituted this suit, the defendant, M. D. McCumber, was in the actual, physical possession of the ground in controversy and had at that time, and for a long time prior thereto, and at all the times since, a cabin within the ground in controversy containing mining tools, implements and mining equipment, and for a long time prior to said 7th day of November, 1910, and at and on said date, had an employee actually living upon the said claim and upon the ground in controversy; and that the plaintiff was not in the actual, physical possession of the ground in controversy on said date, or of any part or portion thereof.

VIII.

That the defendant, Pacific Coal & Transportation Company, its predecessors in interest and its lessees, have been in the actual, physical, open, notorious adverse uninterrupted and exclusive possession of the whole of the said Grant claim, embracing the ground

in controversy in this action, for more than ten years prior to the commencement of this action.

IX.

That the defendant, Pacific Coal & Transportation Company, its predecessors in interest, and its lessees, have been in the actual, physical, open, notorious adverse uninterrupted and exclusive possession of the whole of the said Grant claim and of the ground in controversy in this action, for more than a period of seven years prior to the commencement of this action. [542]

X.

That on or about the ——— day of ———, 1901, the plaintiff Pioneer Mining Company, was organized under the laws of the State of Washington; that for a long time prior thereto Jafet Lindeberg, Eric O. Lindblom and John Brinteson, the organizers and principal stockholders of the Pioneer Mining Company, were doing business at Nome, Alaska, as a copartnership known as and called the Cape Nome Pioneer Company and also the Pioneer Company and also Lindeberg, Brinteson & Lindblom, and were the grantors and predecessors of the Pioneer Mining Company to all of the lands and premises acquired by said Pioneer Mining Company at the time of its organization; that the said Jafet Lindeberg is now and has been at all times since the organization of the plaintiff corporation, the president and general manager of said Pioneer Mining Company; that between the years 1900 and 1904 the said Jafet Lindeberg, John Brinteson and Eric O. Lindblom were also copartners doing business under the firm name

and style of Moonlight Springs Water Company, and during the year 1903 were the owners and in possession of that certain placer mining claim known as and called the Moonlight claim and situated adjoining and west of the premises in controversy in this action; that on the 18th day of May, 1903, the said Moonlight Springs Water Company as then constituted, began an action in this court, being Cause No. 221, entitled Jafet Lindeberg et al., vs. George Doverspike et al., that the defendants in said action, Doverspike, Howard, Crawford and Williams, were lessees of the defendant, Pacific Coal & Transportation Company, under a written lease executed in the fall of 1902, expiring in the month of June, 1903, upon the lands and premises described herein as the Grant claim, and were working and mining the said claim and extracting [543] the gold from the same by means of mining, and depositing the same in dumps of pay gravel upon the surface of the westerly half of said claim, the ground in controversy in this action; that by said action so commenced the Moonlight Springs Water Company sought to enjoin the said lessee, Doverspike et al., from carrying on their mining operations on the ground in controversy, in order to prevent the said lessees from polluting the waters of Moonlight Springs, the source from which said Moonlight Water Company obtained its water supply; that in said action the said lessees filed their answer setting up the title to the ground in controversy in the defendant, Pacific Coal & Transportation Company, and setting forth their lease; that a temporary restraining order was issued in said

action on behalf of the Moonlight Water Company and against said lessees, and subsequently upon hearing, on the merits, was dissolved; that thereafter the said lessees, Doverspike et al., began an action in the above-entitled court, on the 29th day of June, 1904, against the said Jafet Lindeberg, Eric O. Lindblom and John Brinteson; that said action was litigated until sometime in October, 1909; that during all of the times herein mentioned while all of said litigation was pending, the said Jafet Lindeberg was the president and general manager of the plaintiff, Pioneer Mining Company, and had charge of all its business in the District of Alaska; that during all the time mentioned the Pioneer Mining Company did not assert any title to the ground in controversy and never claimed or asserted ownership or possession or title to any part or portion of the ground in controversy upon which the said lessees of the defendant, Pacific Coal & Transportation Company, were then mining and working, but that the said Jafet Lindeberg, the president and general manager of the Pioneer Mining Company, at all of said times recognized [544] in said litigation the said Pacific Coal & Transportation Company to be the owner of the said ground in controversy; that by reason of the facts herein set forth the plaintiff, Pioneer Mining Company, is now estopped from claiming or asserting title or ownership to the lands or premises in controversy.

XI.

That the defendant, Pacific Coal & Transportation Company, its grantors and predecessors in interest and its lessees, including the defendant, M. D. Mc-

Cumber, have since the date of location, on the 9th day of January, 1899, of said claim by the said W. N. Grant, expended large sums of money in prospecting, mining, working and developing the said ground in controversy, and have greatly increased and enhanced the value of said ground and that during all of said time the plaintiff, Pioneer Mining Company and its predecessors in interest, stood by and failed, refused and neglected to assert or claim title to the grounds in controversy; that ever since the year 1908 the defendant, M. D. McCumber, was in the actual, physical, open and exclusive possession of the ground in controversy, and since November, 1909, had a cabin on the ground in controversy and was engaged in mining, prospecting and developing the said ground in controversy, and expended thereon large sums of money and by his mining work discovered a valuable pay channel of pay-dirt and gravel running through said ground in controversy, thereby greatly increasing and enhancing the value of said ground; and that the defendant, M. D. McCumber, had an employee living and working on the said ground in controversy at the time this action was commenced, and said McCumber continued in possession and was in the possession of the ground in controversy at the time of the trial of this action.

[545]

That during all of said time the plaintiff, Pioneer Mining Company, was engaged in mining on ground adjoining, in that immediate vicinity, and did not attempt to stop, interfere or restrain the said McCumber in said mining and developing work, and did

not claim or assert title to said ground.

And as conclusions of law from the foregoing facts, the Court now finds and decides:

I.

That the defendant, Pacific Coal & Transportation Company, is the owner and entitled to the possession, subject to the rights of the defendant M. D. McCumber, of the whole of the placer mining claim as described in its answer and known as Bench No. 1 at the base of Anvil Mountain, otherwise known as "Moonlight" or "Grant" claim, and as definitely described in the foregoing findings of facts, as against the plaintiff and all persons claiming or to claim the same, or any part thereof under it. And that said plaintiff has not any right, title or interest in or to said mining claim or any part thereof.

II.

That the defendant, Pacific Coal & Transportation Company, is entitled to a decree perpetually enjoining said plaintiff from ever asserting any claim, right, title or interest in or to said mining claim, or any part thereof, adverse to the defendant, Pacific Coal & Transportation Company, and to a decree quieting its title as against the said plaintiff.

III.

That the defendants are entitled to a judgment for their costs and disbursements to be taxed herein against the [546] said plaintiff, Pioneer Mining Company.

Let judgment and decree be entered accordingly.
Done in open court this —— day of March, 1902.

District Judge. [547]

AND BE IT FURTHER REMEMBERED that thereafter, and on the 13th day of April, 1912, the Court overruled and denied the defendants' said objections and exceptions to plaintiff's proposed findings of fact and conclusions of law, and to such ruling of the Court, an exception was taken and allowed; and also at the same time the Court refused to make, sign and file the defendants' said proposed findings of fact and conclusions of law, and denied the same, to which ruling of the Court the defendants then and there excepted and the exception was allowed; and at said time, over the objections and exceptions of the defendants, the Court signed and filed the said findings of fact and conclusions of law proposed by the plaintiff.

AND BE IT FURTHER REMEMBERED, that thereafter, and within the time allowed by law, the defendants made, served and filed in writing, their motion for a new trial, as appears in the records, files and transcript of this cause, which said motion was, on the 20th day of April, 1912, overruled and denied by the Court, to which ruling of the Court an exception was taken and allowed by the defendants. And thereupon on said 20th day of April, 1912, the Court made, signed and filed its decree in favor of the plaintiff and against the defendants, over the objection and exception of the defendants, which said decree was as follows: [548]

*In the District Court for the District of Alaska,
Second Division.*

No. —.

PIONEER MINING COMPANY, a Corporation,
Plaintiff,

vs.

THE PACIFIC COAL & TRANSPORTATION
COMPANY, M. D. McCUMBER, JOHN DOE
and RICHARD ROE,
Defendants.

Decree.

This cause coming on regularly to be heard before the Court without a jury, on the 13th day of November, 1911, and the trial thereof continuing from day to day, except Sundays, to November 27th, 1911; the plaintiff appearing by G. J. Lomen, O. D. Cochran and Geo. D. Schofield, its attorneys, and the defendant, The Pacific Coal & Transportation Company appearing by its attorney Elwood Bruner, and the defendant M. D. McCumber appearing in person and by William A. Gilmore, his attorney; witnesses on behalf of the plaintiff and the defendants having been sworn and testified, and documentary evidence and depositions on behalf of the parties hereto being read and introduced in evidence; and the Court having heard the argument of counsel for the respective parties, and having heretofore rendered and filed its written opinion herein, and having made and filed its finding of fact and conclusions of law, and being now fully advised in the premises, and upon motion

of G. L. Loman, O. D. Cochran and Geo. D. Schofield, attorneys for the plaintiff, does now therefore, hereby

ORDER, ADJUDGE and DECREE, that the plaintiff have judgment as prayed for in its complaint herein, against the [549] defendants, the Pacific Coal & Transportation Company and M. D. McCumber, and each of them; that all adverse claims of the defendants and each of them, and all persons claiming or to claim the premises hereinafter described, or any part thereof, through or under said defendants or either of them, are hereby adjudged and decreed to be invalid and groundless; and that the plaintiff be, and it is hereby declared and adjudged to be the true and lawful owner of the placer mining claim and premises described in its complaint and hereinafter described, and the whole thereof; and that its title thereto is adjudged to be quieted against all claims, demands or pretensions of the said defendants or either of them, and the said defendants and each of them, are hereby perpetually enjoined and prohibited from setting up any claim or claims thereto or any part thereof. Said premises are bounded and described as follows:

That certain placer mining claim lying and being in the Cape Nome Mining and Recording District, District of Alaska, known as Bench claim No. 1 Moonlight Creek, near Moonlight Springs, and more particularly described as follows:

Commencing at stake No. 1 or the southwest corner which is identical with the southwest corner of Robert Lyng's Moonlight Claim and

the northeast corner of Placer Claim No. 2 on Moonlight Creek; thence S. $60^{\circ} 12'$ E. 714.5 feet to stake No. 2 or the S. E. corner which is identical with the S. W. corner of the Carlson location; thence N. $40^{\circ} 01'$ E. 986.8 feet to stake No. 3 or the N. E. corner which is identical with the N. W. corner of the Carlson location; thence $60^{\circ} 12'$ W. 600 feet to stake No. 4 or the N. W. corner; thence S. $47^{\circ} 51'$ W. 1021.3 feet to stake No. 1 or place of beginning.

All bearings refer to the true Meridian, Magnetic variation $19^{\circ} 30'$ E.

And it is hereby FURTHER ORDERED, ADJUDGED AND DECREED, that the plaintiff do have and recover its costs [550] and disbursements herein, hereby taxed at ———, against the said defendants, The Pacific Coal & Transportation Company and M. D. McCumber, and that execution issue hereon.

Done in open court this 20th day of April, 1912.

CORNELIUS D. MURANE,

District Judge. [551]

Now, within the time allowed by law, the defendants present this, their Bill of Exceptions, and pray that the same be settled and allowed by the Court.

Dated at Nome, Alaska, this 2d day of May, 1912.

ELWOOD BRUNER,

Attorneys for Defendant Pacific Coal & Transportation Company.

WILLIAM A. GILMORE,

Attorney for Defendant M. D. McCumber.

The above and foregoing Bill of Exceptions having

been served, filed and presented for settlement within the time allowed by law, and being now found full, true and correct, containing all of the evidence introduced at the trial, the same is now settled and allowed by the judge who tried said cause.

Done in open court this 14 day of May, 1912, at Nome, Alaska.

CORNELIUS D. MURANE,

District Judge.

Service of the above and foregoing Bill of Exceptions is hereby admitted, this 2d day of May, 1912.

G. J. LOMEN,

Of Attorneys for Plaintiff. [552]

[Endorsed]: No. 2150. United States Circuit Court of Appeals for the Ninth Circuit. The Pacific Coal & Transportation Company, a Corporation, and M. D. McCumber, Appellants, vs. Pioneer Mining Company, a Corporation, Appellee. Transcript of Record. Upon Appeal from the United States District Court for the District of Alaska, Second Division.

Filed June 24, 1912.

FRANK D. MONCKTON,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Meredith Sawyer,

Deputy Clerk.

